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HEARING ON THE MANAGEMENT OF FISHERIES BY THE NATIONAL MARINE FISHERIES SERVICE

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

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HEARING ON THE MANAGEMENT OF FISHERIES BY THE NATIONAL MARINE FISHERIES SERVICE

House of Representatives, Subcommittee on Fisheries Conservation, Wildlife and Oceans, Committee on Resources, *Washington, DC.*

The Committee met, Pursuant to notice, at 10:30 a.m. in room 2133, Rayburn House Office Building, Hon. Jim Saxton (chairman of the subcommittee) presiding.

STATEMENT OF THE HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Saxton. Let me just remark at this point. We are able to move through business expeditiously here as we just did, and with a great deal of dispatch. And the reasons therefore have nothing to do with us as members, except that we have been smart enough to hire good staff. And I would just like to take this opportunity to thank all of those who are responsible for that kind of organization. The staff are extremely important to us, and I hope everyone here recognizes that fact.

All right, we have another agenda here.

We will at this point reconvene the Subcommittee for purposes of the hearing. The purpose of today's hearing is to fulfill the subcommittee's oversight responsibility over our nation's valuable fisheries resources, and the government agency that oversees these resources is the National Marine Fisheries Service, known as NMFS.

Let me ask unanimous consent at this point that Mr. Tierney and Mr. LoBiondo, be permitted to join us on the committee dais.

Hearing no objection, it is so ordered.

Let me just state that I think this is an extremely important hearing. Mr. Abercrombie and I at the outset of this year, made a very simple request to the Full Committee Chairman, that the name of our Subcommittee be changed from the Fisheries, Wildlife and Oceans Subcommittee to the Fisheries Conservation, Wildlife and Oceans Subcommittee. That change was made, and while it added only one word to the title of our subcommittee, to me it was a very important change. And to the extent that we are able to reflect that name change in our subcommittee, we will be successful.

It is my view that the agency that oversees Fisheries Management, NMFS, has two missions, and that they are sometimes, maybe very often, at odds with each other. On the one hand, NMFS must generate the greatest economic benefit possible from our nation's fishery resources; while on the other it is charged with conserving these very same fish for future generations.

These dual competing missions appear to cause declines in fisheries throughout the EEZ. The Congress has witnessed, for example, decline of New England groundfish, salmon in the Northwest, redfish in the Gulf of Mexico, and sharks along the Atlantic Coast.

As Chairman of the Fisheries Conservation Subcommittee, it is my goal to find ways to get NMFS on the correct path toward fisheries conservation. Some questions that come to mind here are, is the Department of Commerce the appropriate place to house an agency that must work to conserve fisheries? Is there a more appropriate department where this agency can more easily fulfill its missions? Should these missions be changed or limited in some way?

Members of the Subcommittee have questions about specific issues within their regions, states, and districts, that deserve thoughtful and comprehensive answers. I am confident that today's witness, Mr. Rolland Schmitten, the Assistant Administrator of Fisheries of NMFS, will do his best to disclose as much accurate information on each unique situation as possible.

I have requested that he bring along his experts, so that the Subcommittee today can fully air all issues of importance to Members, and not have to wait for followup answers by mail. I look forward to a productive hearing, and thank Assistant Administrator Schmitten and his staff for being here with us today.

I now turn to the Ranking Member, the gentleman from Hawaii.

[The prepared statement of Mr. Saxton follows.]

STATEMENT OF HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Good morning. The Subcommittee will come to order. The purpose of today's hearing is to fulfill this Subcommittee's oversight responsibilities over our Nation's valuable fishery resources and the government agency that oversees these resources—the National Marine Fisheries Service, also known as NMFS.

It is my view that the agency has two missions at odds with each other. On one hand, NMFS must generate the greatest economic benefit possible from our Nation's fishery resources while, on the other hand, it is charged with conserving these very same fish for future generations. These dual competing missions appear to cause declines in fisheries throughout the Exclusive Economic Zone. The Congress has witnessed, for example, the decline of New England groundfish, salmon in the Pacific Northwest, redfish in the Gulf of Mexico, and sharks along the Atlantic coast.

As Chairman of the Fisheries Conservation Subcommittee, it is my goal to find ways to get NMFS on the correct path toward fisheries conservation. Some questions that come to mind here are: Is the Department of Commerce the appropriate place to house the agency that must work to conserve fisheries? Is there a more appropriate department where this agency can more easily fulfill its missions? Should these missions be changed or limited in some way?

Members of the Subcommittee will have questions about specific issues within their regions, states and districts that deserve thought and comprehensive answers. I am confident that today's witness, Rollie Schmitten, the Assistant Administrator for Fisheries of NMFS, will do his best to disclose as much accurate information on each unique situation as possible. I've requested that he bring along his experts so that the Subcommittee today can fully air all issues of importance to Members and not have to wait for follow-up answers by mail.

I look forward to a productive hearing and thank Assistant Administrator Schmitten and his staff for coming.

STATEMENT OF THE HON. NEIL ABERCROMBIE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman. I have some interest in this parochially. The Western Pacific Fishery Management Council, West Pac, the National Fishery Service and Long Line Fishing Industry, have worked together to establish a current 3-year VMS pilot program, the vessel monitoring system, in the Hawaii—long-line fishing area for tuna and sword fish. This was the first large scale test of vessel monitoring technology in the U.S. domestic fishery, and I am hoping that we are learning from it, we will have implications planet-wide.

The experience, I believe, gained by the National Marine Fishery Service and WSPAC, the Management Council on the Western Pacific, during this part of the program, has placed them in a position, I believe, of international leadership in the area of developing reliable and desirable tools for fisheries in management. I believe the pilot program has taught a lesson, that anyone who decides to utilize a vessel monitoring system for fisheries management, must be willing to make a long-term commitment, in terms of personnel and funding.

So during the hearing, Mr. Chairman, my concern is that the 3-year project is scheduled to end in December of this year, and I would like to know whether or not the National Marine Fishery Service is planning on including the necessary funding in its 1998 budget to continue the program; whether it is a priority and whether the National Marine Fishery Service is considering the consequences if we terminate funding for this program, in regards to the management of the fisheries.

My point, Mr. Chairman, is that we have made an initial investment. I believe the facts will demonstrate that this investment has already produced results that in line with what Mr. Farr was speaking of, the implications are worldwide, and that we need to make a long-term commitment to the program. I cite that at some length, and specifically to you in my opening remarks, because, even though it could on the surface be seen as referencing only a particular project in my area of the world, I believe that as I indicated, the implications are in fact worldwide and that this is a pioneer effort, one which I believe needs to be continued. So I will be interested in pursuing that.

I also, Mr. Chairman, have a series of questions—far too many to be gone into during the time allowed during the hearing—which I would like to be able to submit for answers, commentary, observations, by the National Marine Fisheries, or appropriate bodies, institutions, individuals, in more detail fashion, in a written form, for the perusal of the committee and staff. Thank you.

Mr. SAXTON. Thank you, Ranking Member.

Mr. Gilchrest, do you have an opening statement?

Mr. GILCHREST. No.

Mr. SAXTON. Mr. Pallone, Mr. Farr. Mr. Pallone.

STATEMENT OF THE HON. FRANK PALLONE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. Again, I want to thank you for holding this Oversight Hearing on NMFS, and I also want to thank Mr. Schmitten for testifying. I wanted to express my concern with NMFS, and the drafting of these new guidelines for the implementation of the new sustainable Fisheries Act, SFA, the National Standards.

As you are aware, the Secretary of Commerce and the regional councils will use these guidelines in their preparation of fishery management plans, and these guidelines are extremely important in the context of council-drafted management plans, as well as the Secretary's management plans for highly migratory species. It is essentially simple to see that these guidelines are imperative to successful implementation of the sustainable Fisheries Act.

It has been brought to my attention that NMFS draft guidelines may have erred in its interpretation of congressional intent, and undercut the fundamental goals of the new act. For example, the need to end overfishing, and also minimize by-catch. And I am also concerned with NMFS handling of bluefin tuna, particular the—angling—category.

Up until the beginning of August this year there was angling category allocation of four school bluefin tuna per vessel, and one large school or medium, or small-medium per vessel per day. But at the start of September, when most fishermen fish for bluefin in my district, a new bag limit was implemented at two school bluefin tuna per vessel per day, and three large school small- mediums per day, per vessel.

Due to the traveling and feeding patterns of small bluefins, fishermen and owners of fishing vessels have told me that it is rare to find large and small-medium bluefin in the same school. They told me that a vessel is likely to catch small bluefin in one area in time, and catch large and small-medium in another area in time.

The allocations set by NMFS have affected many fishermen and fishing vessels within my district. Due to financial cost there was no incentive for fishing vessels to book tuna trips, and several fishermen in my district lost money. It has been suggested to me that maybe it is time that NMFS allow for one fish, per man, per vessel. Unfortunately, this issue cannot be solved today, and I understand that, Mr. Chairman. I do ask, however, that Mr. Schmitten and NMFS properly address this issue next year, when setting new allocations for the bluefin fishery. And again, I want to thank you, Mr. Chairman, and Mr. Abercrombie for holding this hearing.

Mr. SAXTON. Mr. Crapo.

STATEMENT OF THE HON. MICHAEL D. CRAPO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. CRAPO. Thank you, Mr. Chairman. I will be brief. I appreciate you coming for the hearing today, Mr. Schmitten and Mr. Chairman. I appreciate you for holding this.

As you both know, I am very concerned about the activities of the agency, with regard to the Pacific Northwest salmon, and the recovery efforts underway there, with regard to salmon and steel head. I have strong concerns about the direction the agency appears to be going, and about the management. This is not a specific comment on the managers, because I think they are trying their hardest in working hard with us. But I believer there is some significant issues with regard to how the issue is being managed, that

I would like to review with you in the hearing today, and I look forward to the opportunity when that time comes. Thank you.

Mr. SAXTON. Mr. Farr.

STATEMENT OF THE HON. SAM FARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. FARR. Thank you, Mr. Chairman. As we get into the hearing I am going to be asking more specific questions, but I share Mr. Pallone's and others concerns, that the intent of Congress has not been reflected in the proposed regulations. I think we are most egregious, abusive it is, that you have interpreted the law where it says shall, and made that permissive upon the councils, and I do not think that was the intent, nor is it what the law says, and I will be asking some more questions about that. But thank you, again, Mr. Chairman, for having this hearing, and the hearings that you had during the recess.

Mr. SAXTON. Thank you. You are now going to hear from our witness, Mr. Schmitten, and Mr. Director, I understand you would like to take a few minutes more than 5 minutes, which is the normal allotted time. So proceed. We are interested in what you have to say this morning.

STATEMENT OF ROLLAND A. SCHMITTEN, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE

Mr. SCHMITTEN. Well, thank you very much, Mr. Chairman, and good morning to the members. I am Rollie Schmitten, known as Assistant Administrator for Fisheries, and I am delighted to be here, because I think it is this type of exchange that will be very beneficial to the agency and to hear your views. I will come back and answer the questions that have already been raised, but I will wait and see that after my comments.

I would like to start with introducing some of the important people within National Marine Fishery Service that will help with those answers you have asked for, and I will begin with the person on my left, who is our new Deputy Director, Dr. David Evans.

David is replacing Dr. Nancy Foster, who has now become NOAA's Assistant Administrator for NOS, National Ocean Service. Dave was the deputy of NOS before he joined us, and he is a physical oceanographer from the University of Rhode Island, and we are really proud to have him with us.

To my right, Dr. Gary Matlock, the Director of the Office of Sustainable Fisheries, and he will certainly assist with handling many of your management questions.

And you ask that we have a budget expert, and we have our Acting Division Chief for Budget, Mr. Alan Risenhoover, on my far left. Many of you have known Alan from his previous role, and that is our head of Congressional Affairs.

Mr. Chairman, this is a bit of an unusual hearing, and you can tell by the briefing book and the size of that book we have like clear cut the last remaining old growth in the west, but we have spent a lot of time in preparing for this hearing. I have submitted to the Subcommittee a fairly lengthy statement. I will disregard that in brevity, and just provide a synopsis of my comments.

I do think this is a great opportunity for the agency, and we will share some progress. And I want to share some successes, because so often we focus on the calamity, the crisis in fisheries; there are successes as well. But I think most important to discuss the issues that are important to you and your constituents.

As the chairman outlined in his comments, these are indeed challenging times for those of us that are involved in this very important sector of our culture and economy. We are the one of many of the world's coastal countries that are coping with the challenges that the fisheries' failures can bring, however, we will be among the biggest beneficiary by making the very difficult decisions necessary to transition to sustainable fisheries. And that truly is our goal. And, Mr. Chairman, I support the word, conservation that you have put paramount.

I have talked to my colleagues in other countries—I have just come from Mexico—and the United States is certainly identified as a leader in the area of conservation. And I am pleased to be the head of an agency that plays a pivotal role in shaping the future in the marine fisheries, not only for this nation, but for the world.

As a global society we are relatively new at managing fisheries; not at catching fish, but at managing fisheries. Our ability to catch fish in salt water has existed for a long time; much longer than our ability to control harvest. In fact, serious management by the United States of its marine fisheries really only go back 20 years, and that goes back to the passage of the Fisheries Conservation and Management Act, which we know as the Magnuson Act. That was the first comprehensive Federal legislation to address this subject. And at the time it was felt very revolutionary; probably still is in its scope and its vision. And it certainly is being copies around the world; Peru, Mexico, Canada. Many countries are looking at our system.

But it was identified as correcting the negative impacts foreign fishermen were having on our stocks, without a lot of thought or a lot of caution of really what was happening to the domestic fishing capacity once the foreigners had been removed.

By the 1990's we had achieved our goal of Americanizing our domestic fisheries, yet the secondary goal of the Fisheries Conservation Management Act to stop over-fishing was far from met. I am not even sure it was even addressed at that point.

The notion that over-fishing could, and indeed has occurred, was just being realized throughout the world's fishing community.

Mr. SAXTON. Mr. Schmitten.

Mr. SCHMITTEN. Yes, sir?

Mr. SAXTON. Excuse me. Could you turn off the light so that he can—Thank you.

Mr. SCHMITTEN. Thank you, Mr. Chairman.

We now realize that fishing can and has already had profound effects on marine stocks; just look at New England. But in the face of increasing competition and diminishing economic returns, a concept of reducing catch in the short-term for improving long-term sustainability, has generally been met with very stiff opposition.

An economically unhealthy fishing industry can not afford mandatory catch reductions, even temporarily. Resulting stock declines have often been met with even more unsustainable fishing effort.

And this situation of excess fishing capacity has further been exacerbated by the application of technology advances, in the finding and catching a fish.

Now the agency is now faced with the daunting task of stopping and indeed reversing, for many fisheries, the expansion of our capabilities to capture fish. This reality has brought about major changes in our fisheries management philosophy, and is addressed in our new strategic plan, which you should have before you, Mr. Chairman. But it is interesting, when taking over the head of this agency that we did not have a long-term, let alone a short-term strategic plan, and we have now put one out.

We recently completed our programmatic priorities, which are embraced in this plan. It is designed to guide the agency for the next 5 years. The plan is grounded in the knowledge that the agency must pursue an aggressive conservation oriented policy toward fisheries management; identify clear priorities; and link these goals for the agency's operational and budget priorities. And I am proud to tell you that our strategic plan is one of the first in government to meet the requirements of the Government Performance and Results Act, the GPRA, which actually shifted the focus of the performance measures from activity-based objectives to result based objectives. And we did not develop the plan in a vacuum, which so often happens in this world that we live in. But it was developed with the help and the advice for the people that we serve.

The plan has three broad strategic goals; build sustainable fisheries, recover protected resources, and then a focus on a health coastal habitat.

Mr. Chairman, you probably know it, but let me just tell you how big a business fisheries really are. In 1996 the commercial landings in the U.S. by the United States fishermen were 9.6 billion pounds, with an ex-vessel value of $3.5 billion.

There are over 300,000 direct jobs, and if you increase the jobs by those that process and service those products, it is well over a million people.

U.S. consumers spent $41 billion in fisheries products in 1996, with an increase in our GNP by $21 billion. But if we were to follow a conservation-directed maximum sustained yield process for all our fisheries, we would accrue an additional $4 million of benefit.

I do not want to leave out the opportunity of mentioning the recreational impacts on our fisheries. This is a growth area. It is estimated that over 300 million fish are being caught by our men and women that are fishing in marine waters. Eight million fishermen are currently fishing—64 million trips—and they contribute between $5 and $7 billion dollars to the annual economic benefits of this nation. Recreational fisheries is the second most popular outdoor sport in the nation.

Currently we find a situation in which more and more vessels are racing to catch fewer and fewer fish. This trend makes fishing more hazardous, allocation decisions certainly more contentious, and by-catch problems greater. And there is probably no better example of the current situation in the U.S. than that of Atlantic bluefin tuna.

And I was hoping I could share this with Mr. Pallone, but these fish are sought from Maine to Texas. They are sought by both commercial and recreational fishermen, who use a variety of gear. The internationally established quota is 1,350 metric tons for the entire U.S., all of which is dedicated to scientific monitoring; which supports around 10,000 commercial vessels and permits, and 15,000 recreational vessels.

If you accrue all that, that boils down to representing less than one half of one fish per permit per year. That is what all these people are fishing for, and the growth is exponential as far as permits. Consequently, the regulations that we apply become the focus of public debate, various interest groups, challenge their adequacies, and we are faced with an increasing number of legal challenges on our regulations.

The quest to achieve the sustainability and rebuild our fisheries has been greatly enhanced with your amendments to the Sustainable Fisheries Act, the Magnuson-Stevens Fisheries Conservation and Management Act. You have given us the tools that we need to move forward and meet our mandate.

The Act reflects the U.S. commitment to apply the same principles nationally as we have been espousing around the world in the international community. In the FAO the code of conduct for responsible fisheries, we have used conservation as the standard. The straddling stocks, we have used conservation as a standard. High seas drift nets, again the United States promoted conservation. So it is good to have these underpinnings to do the very same thing at home.

Mr. Chairman, I think that shifting the burden off of the resource, and certainly working for a precautionary approach is what we are attempting to do. That is reflected in a recent court decision—a very important one—out in New England, from a Federal district court, that dealt with our Amendment 7 to the groundfish plan. In his final decision the judge wrote, “it is appropriate therefore, for the Secretary to be conservative in dealing with the issues of conservation, and in the face of uncertainty to take more strenuous measures, even though they may unfortunately have short-term dramatic negative effect on the fishing industry.” A court has said, what you are attempting to do by promotion of conservation is the right thing to do.

With a sound foundation in science information, the agency is much better able to meet its commitments of sustainable fisheries. For example, optimum yield for each fishery must be set two or less than MSY. Over-fishing is statutorily defined, and over-fish fisheries must be identified and rebuilt within a 10-year timeframe. I think that the Act clearly recognizes that sustainability of fisheries depends critically on the sustainability of a fish.

Mr. Chairman, just to conclude, I have assigned the implementation of the Sustainable Fisheries Act as the agency’s highest priority, at least for the next 2 years and longer if necessary. We have committed the necessary funds, the fiscal needs, the human resources, and re-programmed all of our activities within the flexibility that we have under the law; to attempt to implement this act is our highest priority.

We have also done this in an transparent fashion. You can tune onto the Web page today, and you can see our Sustainable Fisheries Act programs and track our progress. It is updated every week. And so the public can track what we are doing.

Mr. Chairman, just in concluding, I do not want to leave the committee with a feeling that everything is a crisis out there; to leave you with a very bleak picture of our national marine fisheries, because that is not necessarily the case.

Let me cite some successes, because I think you deserve this, and you need to be able to share these with your constituents. The recovery striped bass; not necessarily something we are solely responsible for, but we certainly were a part of.

It was accomplished through host partnering with the states that are part of the Atlantic States Marine Fish Commission, and other agencies. But I can tell you what we have achieved. Our information records go back to the 1880's. This year science showed that there are more stripe as in any time of the history of this nation, so we can have successes.

Gray whales. Gray whales after many years of protection under the Endangered Species Act, we were able to delist. There are over 22,000 gray whales. And I think it demonstrates that the Act can work both ways. People often say that the Endangered Species Act is a one track, one direction, piece of legislation, and that is not necessarily the case. Even the disaster in New England that developed over a 20-year timeframe resulted in this agency, with your support, taking some fairly dramatic measures. NMFS asked the Council to bring about its Amendments 5 and 7; and today, two of those three stocks are already showing signs of recovery. The recovery is happening quicker than our scientists expected, and it shows that we can bring about recovery. Alaska groundfish——

Mr. SAXTON. Mr. Schmitten, if you could begin to summarize. We have some members who would like to ask you some questions who have to leave.

Mr. SCHMITTEN. I will do that right now. Just Alaska groundfish, the largest fishery in the nation, by both volume and dollar, is stable, robust. The second largest fishery in this nation, shrimp in the Gulf of Mexico is stable.

I will just conclude by saying, this is a wonderful opportunity, and it is probably more important that we focus on the issues that you have, and the issues that we may bring out. I have noted the questions on HMS and the national standards, and others, and at the appropriate time I will answer those too.

Mr. Chairman, thank you for this chance.

[The prepared statement Mr. Schmitten may be found at end of hearing.]

Mr. SAXTON. Thank you very much, Rollie, for a very articulate statement. The Committee will be operating under the 5-minute rule this morning, at least for the first round of questions. And that will apply to yours truly as well. So we want to move as rapidly as we can to cover the issues at hand.

Mr. Schmitten, you know from our previous conversations I have some reservations about our successes, primarily because the successes that we can point to follow disastrous situations, which our system appears to permit to occur.

As an example, you gave a success I agree with, and I have used the example many times—it happens to be striped bass. The reason we were successful with striped bass is because we let the species crash, and now we have been successful in pumping life back into the species. And I am glad that we have those kind of successes, but I would be more pleased if we did not have to point to those successes because of our failures to begin with.

You and I had a conversation a day or so ago, about these matters, and I appreciate the openness with which you address them. But it still leaves me asking the question—what is it that we can do as legislators to help you find a better way to prevent the difficult situations, which we seem to inevitably find ourselves facing.

Of course, as you did, I could point to the groundfish situation in New England. I could also point to the striped bass situation that we have recovered nicely from. But also point to a situation involving Atlantic sharks, which the Department of Commerce helped to develop an economic incentive to take, and subsequently permitted the over-fishing of. I could also point to the redfish situation in the Gulf of Mexico, which I suppose is another success following a disaster, which we collectively permitted to occur.

It just seems to me that there should be a better way for us to manage these resources, so we do not continually find ourselves trying to be successful in the recovery program for something we have allowed to occur.

I think there is no better time to discuss this matter then now and to be able to look at those things that we have observed over the past, particularly from my point of view in the Atlantic, and I am sure from the Members' point of view in the Pacific, to talk about a situation in the historical context that I have just mentioned; and to talk about the coming situation with the herring fishery and the mackerel fishery in the Northeast.

As probably everyone on this committee knows, we face a situation with regard to an underutilized species. Through government efforts and through private efforts, an economic incentive has occurred for new vessels to enter this fishery. We know that there are some small boats that are already in the fishery. We also know that there is at least one factory freezer trawler, which is preparing to enter the fishery. And I was struck earlier this week to read an advertisement in National Fisherman which I would like to read.

It says, "Wanted—captains, mates, engineers, deck hands, experienced. Has your job been lost to a buy-back? We have two freezer trawlers located in the U.S. east coast to fish herring and mackerel. We are looking to fill these positions; great opportunity, steady employment."

Now, you and I have discussed at length the situation involving the Atlantic Star. We also have made reference to other ships, which are—I believe, currently in the Northwest, although maybe they are not still in the Northwest, if you read anything into this advertisement—which are prepared to enter the fishery. We have also had discussions relative to what we can do to prevent the overfishing of these currently underutilized species.

Part of that conversation leads to statements which you have readily and forthrightly made, that you cannot do anything to prevent the overfishing of these species until Congress gives you some tools to work with.

Now, we may have experienced some successes, but in almost every case they have followed an overfishing problem. Here we are, once again it appears to me, on the brink of taking another underutilized species, permitting the fishery to become overcapitalized, to create another disaster from which we must yet recover.

Would you comment on this in the context of the regulatory schemes that you follow, and what is it that we need to give you, in terms of additional tools, or a different structure, as I mentioned in my opening statement, relative to conservation efforts, relative to whether or not you should remain in the Department of Commerce. What is it that we need to do differently in order to prevent these disasters from which we must recover?

Mr. SCHMITTEN. Thank you, Mr. Chairman. I think where we sit is not as relevant as what we do, and I think the imperative thing here is making sure that conservation is first in all of our minds.

Certainly under existing law today most underutilized resource are recognized as an open-access resource—that has been the history of our nation—and therefore domestic vessels are allowed in and out with the freedom to access these resources.

In the particular fishery that we are talking about, the herring fishery, there is not a fisheries management plan. The Council is working very diligently, and I think these issues rest with the Council, and that may be where our solution is; to get the plans out in a timely way to avoid the cycle of overfish, overcapitalize, seek a new fishery, that you have just described.

There is a preliminary management plan in place. It has provided a couple of safeguards though. First of all, it set an ABC, an allowable annual harvest, which we can monitor. If catch reaches that level, we have the authority under Magnuson to close that fishery down, and we very much intend to do that.

I think that this gets to two issues. One, support of limited effort around the country for our fisheries, which this agency very much does support, seven of eight councils support. We cannot just allow the uncontrolled expansion into all these fisheries. And second, an issue of timeliness, and that is a question of should there be some kind of plan in place prior to the opening of an underutilized fishery. Personally, I think that idea is consistent with good management. I cannot speak for the Administration because I have not really ever discussed this. But it is consistent with a conservation approach, in which we put the fish first. We put the burden, not on the fish, but on the fishers, and it is something that I can philosophically support.

I would ask Dr. Matlock if he would have anything to add to that?

Mr. MATLOCK. The only thing is really a very specific item, and that is in the case of the mackerel fishery, there is a domestic allowable harvest that has been set, because there is a fishery management plan for that fishery in place that sets a harvest level much lower than the allowable biological catch. So there has been a fairly significant amount of conservativism that has been built into the setting of that allowable harvest for mackerel. That is all.

Mr. SCHMITTEN. You also have given us some tools to be proactive for the first time. We have always been reactive, and you have pointed that out. Those tools are coming out of the Sustainable Fisheries Act, and they include, preventing overfishing, adherence to MSY, so we will not let the fish go down to the levels that you have described. Mandatory rebuilding for those fish that are overfished, within a 10-year timeframe. And I think important to this, something that has always been missed, is the critical nature of habitat. We can shut the fisherman down in many cases. We will never bring back the fish if we do not go in and preserve its habitat.

Mr. SAXTON. Thank you. I am going to stick with my word. My time has expired. I would like to come back to this issue in the future. And so let me turn this point to the Ranking Member.

Mr. ABERCROMBIE. Mr. Chairman, if Mr. Farr has to leave, I would——

As I indicated, Mr. Schmitten, I will submit some questions and some inquiries—not all questions, in writing, for your observation and comment. I think it will be more useful to us. So because we have such little time, do not feel that you have to answer in detail. If you could just give me a succinct answer or observation, that essentially covers things. I am not going to hold you to—We can followup later.

But you heard my initial remarks concerning West Pac and the question of the vessel monitoring system. Am I correct that the money that I think would be necessary to continue is not in the budget proposal for 1998?

Mr. SCHMITTEN. Mr. Abercrombie, no, that is incorrect. We have an enforcement augmentation of $1.7 million for 1998. Assuming that both the House and Senate supports those levels, it is for three areas. One of those is vessel tracking. We happen to feel strongly about that. There would be some $500,000 available for vessel tracking if we are able to secure this $1.7 million.

We think it is a cost-savings way, in which we do not have to put enforcement agents all over our oceans to try to track the vessels, where we can sit in a room and track them everyday on a 24-hour basis. We are very impressed with this system, and we want to——

Mr. ABERCROMBIE. So the money is there.

Mr. SCHMITTEN. The money is there.

Mr. ABERCROMBIE. And West Pac will be able to utilize it. When I say the money is there, if it is appropriated.

Mr. SCHMITTEN. Yes. Not only West Pac though, for VMS. The New England area also has a need for vessel tracking and West Pac. Yes, there is money for both.

Mr. ABERCROMBIE. OK. Then it is a priority. Have you already been working with the Department of Defense in this area, technologically speaking, utilizing technology that may have been developed in relation to the Department of Defense research and development efforts?

Mr. SCHMITTEN. Excellent question. We have just begun to do that in the last year, year and a half, and let me tell you about some of the exciting areas that we are looking into. Listening devices. This is no longer classified. We have listening devices in our oceans that allow us now, not only to track vessels that identify what type of vessels they are, but to begin to track fish.

Mr. ABERCROMBIE. I understand.

Mr. SCHMITTEN. Whales on the East Coast.

Mr. ABERCROMBIE. Can you answer in more detail? I appreciate that. My question really is, at this point is that being actively done?

Mr. SCHMITTEN. Yes.

Mr. ABERCROMBIE. That is to say is the DoD and your department ever to work together on this?

Mr. SCHMITTEN. Yes.

Mr. ABERCROMBIE. And is it being done?

Mr. SCHMITTEN. Yes, it is.

Mr. ABERCROMBIE. OK. We will need to flush that out a little more, because I think one of the ways that we can deal with the Department of Defense budget, and others, is to try and show that we can integrate a lot of activity from DoD. I agree. I think Mr. Farr at one point, and I believe the chairman, mentioned national security. I do believe that the health of the oceans is a question of national security, and the Department of Defense needs to play a specific role in this activity. So we can perhaps embellish on that.

I will not go into all of the details of the various fish. We have the Atlantic bluefin tuna and others. But on the question that the chairman already alluded to, let me be a little more specific on this Atlantic Star issue.

Is it correct that a permit has been issued to the Atlantic Star to engage in activity? Has a permit been issued to them?

Mr. SCHMITTEN. Yes. Actually fot the herring fishery they really did not need a permit. What they were permitted for was access to a particular area with a particular type of gear.

Mr. ABERCROMBIE. They had to get a permit for that.

Mr. SCHMITTEN. Yes.

Mr. ABERCROMBIE. So this question is really one about the open access area? Now is that a policy? You have to help me here, because I am still learning my way along, and believe it or not, I do not know everything.

I was under the impression you had to have a permit, but is open access in law or is that simply a policy that has been followed for a long time? You can tell me, you do not have to tell Mr. Schmitten. That is all right, Mr. Matlock.

Mr. SCHMITTEN. I wanted to make sure my answer is correct. Yes, it is authorized by law. It is the policy followed by all of our councils. Any domestic fisher can access an open-access fishery.

Mr. ABERCROMBIE. Rather than to get into arguments about permits and so, we need to examine the underline policy as it manifests itself in law, right?

Mr. SCHMITTEN. Yes.

Mr. ABERCROMBIE. OK. I want to make sure I am correct on this too. We have the highly migratory species. This is particularly important, I think, out in the Pacific, but probably is equally pertinent in the Atlantic.

The Secretary of Commerce has the responsibility for drafting a fishery management plan, with respect to highly migratory species. Am I correct on that?

Mr. SCHMITTEN. That is correct in the Atlantic.

Mr. ABERCROMBIE. Now that has not been completed yet. Is that correct?

Mr. SCHMITTEN. We anticipate that being completed by October 1998, consistent with the Magnuson Act.

Mr. ABERCROMBIE. OK. That has taken quite a long time. Is that because you lack scientific data? I mean it is a number of years that this has been going on, right?

Mr. SCHMITTEN. Yes and no. It is not the lack of scientific data. There are several steps in this process; the formation of advisory panels, which we have now done. I think we have much of the science——

Mr. ABERCROMBIE. OK. Has it been a logistics question then?

Mr. SCHMITTEN. Not necessarily.

Mr. ABERCROMBIE. The main reason I am asking the question, Mr. Schmitten—and please forgive me that I keep going on, because my time is up and I want to make sure I have it down. I do not want to get into a situation where it was that you were reluctant to carry out the imperatives of the law, and so that we do not have that kind of clash.

May I take it that your answer is a combination of factors; which does not include the will of the department to do and carry out its responsibilities.

Mr. SCHMITTEN. In fact the very short answer is, that we are aggressively carrying out the responsibilities, and we will meet or beat the time that Congress has given us of October 1998.

Mr. ABERCROMBIE. But you have an absolute deadline for yourself of October of next year?

Mr. SCHMITTEN. You have given us that deadline, and yes, we will meet that.

Mr. ABERCROMBIE. OK. Thank you, Mr. Chairman. If somebody does not, I will keep going, Mr. Chairman, you know how I am.

Mr. SAXTON. Yes, we sure do.

We have two Members that need to leave. It is actually Mr. Farr's turn, I guess as a Member of the regular committee. Mr. Lobiondo has a very quick question. Can we squeeze him in, Sam? Proceed, Frank.

Mr. LOBIONDO. Thank you, Mr. Chairman; thank you, Mr. Farr.

Mr. SCHMITTEN., I just wanted to ask you very quickly, if you could clarify the status of a proposal for joint management of squid, mackerel and butter fish, between the New England and Mid-Atlantic councils.

Mr. SCHMITTEN. I would be happy to do that. It currently rests with the agency. In fact it is on my desk. As we both know, the Mid-Atlantic as the lead has put forward the plan. New England Council has petitioned to be a part of that plan. Where you have species that are inter-jurisdictional, I like all the players to be a party to this, but I do not want them to be a party if it is going to be some sort of obstruction to the angle of preserving the resource and sustainability.

We are looking closely at that. I continue to ask questions, plenty of questions in New England. As it stands, at this minute it is a fisheries management plan that rests with the Mid-Atlantic. That has not changed.

Mr. LOBIONDO. OK. I would appreciate, through Chairman Saxton, if you could keep us updated, because we are very concerned that the New England fishery has had some problems because of poor management, and we are not anxious for New England to come in and reek havoc in the Mid-Atlantic region, where we think our people are doing maybe a little better job.

Mr. SCHMITTEN. I think one of the big issues for New England was would they be able to participate; would they be qualified. Of the 44 vessels that have been permitted, 14 of them are from New England. And that is more than I think people expected. Plus, there is a provision for a small set aside of 5,000 pounds of squid for almost anyone to take. This is a fairly well-drafted management plan, and any suggested changes, we would certainly notify the chair and you as well before we would do that.

Mr. LOBIONDO. Somewhat in advance.

Mr. SCHMITTEN. Yes.

Mr. LOBIONDO. Thank you very much. Thank you, Mr. Chairman and Mr. Farr.

Mr. SAXTON. Mr. Farr.

Mr. FARR. Thank you very much, Mr. Chairman, I have been patient, but I am telling you that my frustration level has not been patient.

When you think that this Congress in an overwhelming bipartisan effort passed the Magnuson Act last year, and in that had the management acts, essential fish habitat requirements. It was set in the law. And you came here before this committee, and you talk about that we gave you the tools to move forward; that you could meet our mandates. And then you turn around and take our mandates, and interpret them totally different than what was written in the law. You weaken the tools. And essentially, I think there is crisis here, and the crisis is a trusting government. How can we trust the agency that is supposed to carry out the mandate of the Federal Government.

I have written several letters to the agency; one to Terry Garcia on October 28th, outlining these issues; no response, no phone call, nothing. Last year in the salmon closure process in California between the first part of the season and the second part, I wrote a letter on July 8th to William Hogarth in Long Beach. Not even a courtesy of a reply on an issue. There is a crisis in government.

In the Federal law it says, any fishery management plan which is prepared by any council, or by the Secretary, with respect to any fish, shall describe and identify essential fish habitat for the fishery, minimized to the extent practical adverse effects on such habitat caused by fishing, and identify other actions to encourage conservation, and enhancement of such habitat. And then you go on to implement these regulations, and turn all the shalls into mays. You just do not have the legal authority to do that.

Where do you get the—here we are, the exceptions for limited—to prevail over fishing. You have the exception in your proposed regulations that it is demonstrated by analysis, that such action will result in long-term net benefits to the nation. It is an exception. Now what the hell do you mean by that? What is meant by, when we put in here the definition of by-catch, and you turn that definition of the by-catch into something totally different than what Congress outlined.

I am really concerned that the regulations that you are coming out with do everything to thwart the intent of Congress to protect the fisheries. How can you protect the fisheries when you are not looking at the habitat of the fishery; when you are not looking at the food chain of the fishery that protects that. The letter outlines several different areas where we think that your regulations, not only misinterpret, but really change the direction of congressional intent.

Lastly, this problem of not responding to the crisis and the Pacific coast salmon season this year, we had some serious concerns by the California Commission and in the communities they represent, and came up with a modification to the Council's regulations. And I ask the Department to step in and look at those, and implement or see if they could implement the proposed changes which I would think protect the season. The fact of the matter is, yours is the tightest season in history. Fishing has been incredibly successful, but it has not gone to the commercial fisherman, it has gone to the recreational fisherman. And what happens—and I represent one of those communities—is that the recreational fish get into the marketplace, even though there are rules that say you should not be selling recreational fish. But if your season is closed to you, the commercial fisherman, and the sports buffs can go out and get record limits and record amount of time, a lot of those commercial fisherman will be fishing as sports fishermen. And it is very difficult to go around to every restaurant and figure out whether they have been buying fish from recreational or sport buffs. So I think we need to listen more to the commercial fishermen. They are trying to sustain the stock there, and have done more before the committees—the Water Committee here, and this committee, and others, who essentially be the advocates for sound fishery management. And yet when they come up with some regulations or suggestions for how it can work, they do not get listened to, and the letters that they Congressmen write do not get responded to.

So I am very concerned, and I think our staff can provide you with a list of all of these regulations that you are proposing them, and I would like to know when you plan to release them, and I hope you do not release them until you rewrite some of them.

Mr. SAXTON. Mr. Farr, that was a series of questions. I know they are all important, but why do you not direct the attention to whichever ones you think are the most important.

Mr. FARR. In a letter that I wrote to Terry Garcia and NOAA on August 28th, and it outlined five of them specifically; where we think the final regulations misinterpret the intent of Congress.

Mr. SCHMITTEN. Mr. Chairman, I think I have the essence of the questions.

Mr. Farr, first of all, let me pick up on the one that I think is the most important; that is listening to the fishermen. And I can cite for instance, the concept of the essential fish habitat came from a California organization, came when I was a councilmember, came 8 years ago from your constituents. That it invested all the way up until it ultimately became law, and I feel very strongly about essential fish habitat.

The guidelines, we do not disagree with you. There are a lot of "shalls." We have tried to follow what Congress has suggested, and also there are a lot of "mays" because we want people to voluntarily be a part. Where they must be a part, we will notify them; where we would like them to be a part, we want them to be our partners in conserving the resource.

The current status is we have no regulations yet. We have them out for comment. We are very open to what the public has to say. In fact, we have extended twice the essential fish habitat regulations just because there has been such an overwhelming points of view. And by the way, they are very divergent, from you're doing way too much; you are being too interpretive; too all inclusive, to you've doing nothing, and I suspect we will find something that satisfies Congress somewhere toward the middle or toward certainly the conservationsite.

Dr. Matlock may have more specifics on the time of these regulations.

Mr. MATLOCK. The comment period for the national standard guidelines does not end until September 18th, so obviously we are continuing to receive comments, and will go through those, address responses and changes that may be appropriate in the guidelines before they are actually finalized. But with respect to the national standards, the comment period is not yet closed.

The essential fish habitat guideline comment period has closed, and we are going through the very numerous comments. We received I think something on the order of 2,500; maybe even more than that, I am not sure of the number—that we are developing responses to, and reassessing the proposed guidelines before they are finalized. So as Rollie indicated, neither one of those sets of guidelines are yet finished, but they are in the proposed stage, comment period closed on one, but not the other.

Mr. FARR. Can you respond to this letter? I will be glad to give you another copy today, but I think those outline the basic concerns that I have, on where I think the proposed regulations are.

Mr. SCHMITTEN. Absolutely. We have worked together enough to know that I will respond in a timely way, and I will get a copy of that, through Assistant Secretary Garcia—happy to.

Mr. SAXTON. If I may, if you have another minute, and if Mr. Gilchrest does not mind, I would like to just try to clarify Mr. Farr's point, by exploring one of the things Mr. Farr pointed to, relative to the by-catch regulations.

Can you add a little more light to the situation as you see. You say the Congress had an intent and legislated relative to the issue of by-catch, and that NMFS then regulated something different. Is that a fair summary of that part of your question?

Mr. FARR. They expanded by-catch. The definition in Section 102, under definitions, Section 3.2—this is what Congress wrote. "The term by-catch means fish which are harvested in a fishery, which are not sold or kept for personal use." It includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch, and a release fishery management program.

The definition that they came up with is different than that. I mean they are too different. You can put them side by side and they are just different.

Mr. SAXTON. Dr. Matlock, would you like to explain why you had a different definition than the law has?

Mr. MATLOCK. Well, the definition as Mr. Farr read for by-catch is as such. There are two terms however in that definition that are further defined in the law, both economic discard and regulatory discards. So the definition that we have put in the proposed guidelines incorporates those other two definitions into the definition of by-catch, so it is not a different one from the standpoint of the definitions combined that are in the Magnuson-Stevens Act.

Mr. GILCHREST. Mr. Farr, is it your understanding that the definition of NFMS loosens our definition so that we are not as strict with by-catch. NFMS does not appear to be as strict with by-catch as was our intent?

Mr. FARR. Yes, that is the interpretation that I have discussed with the staff, and I think the best way, rather than take the time of the committee and argue this here, is that we will just make it into our comments—you can put our comments into the record.

Mr. SAXTON. Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman. Just a quick followup. How long is NMFS definition of by-catch? Can somebody read it to me so I can see the difference between the two? Is it NMFS understanding that your definition complies with the intent of Congress?

Mr. SCHMITTEN. Absolutely. Let me do this for you. We will give a side by side definition of what is proposed in that Congress, and we will do that for the Full Committee.

Mr. GILCHREST. I have a couple of quick questions. One, I am struck by the fact that there is more striped bass in the Chesapeake Bay now than there was when John Smith came here.

Mr. SCHMITTEN. Yes.

Mr. GILCHREST. I mean is that a fact?

Mr. SCHMITTEN. That is a fact. In fact, that is unusual.

Mr. GILCHREST. There is more striped bass here in the Chesapeake Bay than when John Smith said, you could walk from the shore to shore on the backs of these fish.

Mr. SCHMITTEN. Let me make sure I precisely say it.

Mr. GILCHREST. Is there more striped bass here than it was 100 years ago?

Mr. SCHMITTEN. Anytime in recorded history, it goes back to the 1880's. This is not unusual in—logical management. There are more here in this nation than ever before.

Mr. GILCHREST. I have a few more questions. And that is great news, but I do think——

Mr. SCHMITTEN. That is a good story.

Mr. GILCHREST. That is a great story. I just want to make sure I understood that quote, after being a history teacher for a number of years, and teaching about John Smith and all that. It is a fishery that has been managed properly, and we have brought them back. And you have done a marvelous job, and I want to compliment you on that. And it is something that we have to continue to sustain.

I have sort of a broad question. Can you give us the chief reason that certain fisheries have declined in the open ocean or in coastal regions, or why some fish appear to be less than healthy? Now is this political? Is it a problem with enforcement? Is it a problem with overfishing? Is it a problem with habitat? Is it a problem of pollution? What is the general overall chief reason that fisheries have declined; whether it is Atlantic bluefin tuna, whether it is sharks; whether it is shad or salmon? Why are fish declining in some areas dramatically?

Mr. SCHMITTEN. I bet there would be an answer from every one of us in this room, but let me give you mine, and this is a personal answer.

Mr. GILCHREST. One more quick thing. Could you say human impact and be correct?

Mr. SCHMITTEN. Absolutely, yes. In fact, that would be the sum. I was going to say it has been misdirected management of the past. It is human influence, whether it is habitat, whether it is a lack of fortitude by states, by National Marine Fishery Service, by our councils to do the right thing for our species. To not take a precautionary approach, when we know that that is what you must do in the absence of solid science.

Mr. GILCHREST. And to followup on that. You made a comment that you could stop all fishing in the ocean, but unless you protected the habitat you would lose—I do not know what—50 to 75 percent of the commercially caught fish, if you did not protect the habitat.

Mr. SCHMITTEN. In fact—Mr. Farr's gentlemen on the West Coast, and what he said to me—it was a commercial fisherman before our council meeting. He said, you regulators can put us out of business. You can shut our fishery down with your regulations, and you may not bring back the fish that you are concerned about if you do not do something about their habitat. I never forgot that, and that is part of the reason that we have promoted the essential fish habitat provision. Because it is a two-sided equation. Yes, we can control the fisherman, but we have to control the human impact's side, because if there is not a place to spawn for these fish, ultimately we are not going to have the fish.

Mr. GILCHREST. The stripe bass has been successful in Chesapeake Bay, but there continues to be for on—and perpetuity population increase in the Chesapeake Bay watershed; development, construction, sewage treatment plants, rubble fills, landfills, agriculture and so on. At what point do you see the need to understand the limits to what this region can take in order to sustain life in the Chesapeake Bay?

I am going to ask another broad-sweeping question. I hope you have a second round, Mr. Chairman. Broad-sweeping question. If you could do exactly what you think needs to be done to sustain the fishery, to sustain the health of the Chesapeake Bay watershed, looking specifically at habitat, what would you design as far as protecting the habitat for fish to spawn for the Chesapeake Bay?

Mr. SCHMITTEN. I have to be honest with you; I cannot answer that. I would need people that really know about——

Mr. GILCHREST. Can I tell you what two scientists told me on Monday while we were in a boat looking for pfesteria?

I though you were going to cut me off; the red light is up there, Mr. Chairman. We could wait until next year for this.

They said that the Chesapeake Bay would return to John Smith quality if we put a hundred foot buffer around this watershed with trees. That would include every tributary, every river, and every ditch. You would then begin the process of filtering out nutrients so the grass would come back; the habitat would come back; the ecosystem would come back.

I would add to that, but my time is up—the problem of dredging, a whole range of other things. But this is what two scientists said would sustain the Chesapeake Bay.

Mr. SCHMITTEN. It would certainly help, and in Mr. Crapo's districts they are doing that. They have been doing that for a good number of years, and their habitat is much superior to most of what is on the East Coast. It is not without a lot of pain. Idaho and others in the Northwest have contributed to building back habitat.

I am sure you saw this in this morning's paper.

Mr. GILCHREST. No, I did not.

Mr. SCHMITTEN. This is a new outbreak as of yesterday.

Mr. GILCHREST. Oh, pfesteria.

Mr. SCHMITTEN. In the Chesapeake.

Mr. GILCHREST. In fact, I was on the phone with the Governor, just before, because I guess he needs——

Mr. SAXTON. Well we thank Johnny Appleseed for his comments. Mr. Crapo.

Mr. CRAPO. Thank you, Mr. Chairman and Mr. Schmitten. As you might guess, I would like to turn the attention now to the Pacific Northwest salmon and steelhead issues. And I know that you did not specifically address these issues in your opening statement, in your prepared testimony, and I realize this is not a hearing specifically on those issues, but I would like to do everything I can to make sure that you and your agency is focused as much as possible on what is happening there.

In fact, Mr. Gilchrest, as an aside, it is true as Mr. Schmitten says, that we do have the 100-foot buffers, but I tell you there are problems, political problems as well as others, with implementing the system of buffers, because it impacts all kinds of other activities and uses that are, in many cases, not problems, but are nevertheless impacted by such a broad brush approach. And so, I will tell you, if you want to approach that, you will find out how many people will be impacted by buffers.

Mr. GILCHREST. Would the gentleman yield just for a second.

Mr. CRAPO. Yes.

Mr. GILCHREST. I would say, I understand the nature of the problems; economic, political and so on. I think we ought to start from a position of, here is what would work, by using the natural processes, and then understanding that we do have people on the planet and we could manage from that perspective.

Mr. CRAPO. I understood, and I think you and I have talked about this type of issue many times. We could work it out. And that is actually one of the things that I wanted to discuss with you, Mr. Schmitten. I think I would like to set the background for my questions with this comment.

As you probably know, recently there were hearings held in Idaho by another subcommittee of this committee, on the drawdown issue. I have asked, and we held hearings there on review of NMFS activities in the region in Boise. And we have held a committee hearing here with the chairman's agreement.

At that hearing in Lewistown, I believe it was, I asked every witness who came before us—whether it was someone who was fish advocate, or a transportation, or barging advocate, or an advocate for some other particular interest. I asked every witness the same question. And that is, did they feel that the process by which NMFS was seeking to implement the Endangered Species Act requirements, and obligations that it had—I do not remember the exact way I worded it. But did they feel if they were given the opportunity, a meaningful opportunity, to be a part of the process, and that their positions were being heard, and everyone said no.

Now, I will be the first to acknowledge to you that NMFS has a very difficult assignment in this area, and that whoever has that assignment is probably going to incur the ire of about everybody involved. Nevertheless, those types of answers were also consistent with comments that I had been receiving from my constituents from all different sides for a long period of time, and they tell me that something is not working right in terms of the process.

You know that one state has pulled out. Several of the tribes have pulled out of the process. The State of Idaho, I believe I can fairly say is very unhappy with the fact that its efforts to build consensus and bring parties together were rejected by NMFS in its final decisionmaking on what should be done in terms of approaching this year's recovery efforts.

And the question I want to pose to you is, are you aware of those developments, and if so, is something being done or considered at your level in Washington to address the question of making sure that the states, the tribes and the interested parties are truly and meaningfully involved; and that efforts such as that of the State of Idaho to develop a consensus are not rebuffed?

Mr. SCHMITTEN. Mr. Crapo, as you know, my history is from the Northwest, and I spent nearly 45 years there, and also was the one to bring the initial listing. At that time I said we will never survive this unless we work together. And was one of the first to speak out against the current essence of the ESA because it was too federally dominated. I said that we need travel involvement and participation, and we certainly need the states. Frankly, they have the information.

So I am disappointed in this process because I am aware that we have asked for a time out. That is why the current biological opinion is actually for 4 years. And part of that is to go back in. The ultimate answer is going to be with invigorated new science that will say, yes, on barging or no, on barging.

If we do not have a process that is equitable and people are heard—I know ultimately it is a tough decision because NMFS is the one that has to say, yes you are in or you are out; but there has to be a meaningful way that people participate. And I will go back, and I will talk to my regional administrator and say that I am hearing these things.

Mr. CRAPO. All right, I appreciate that. And again, I do not mean to imply that people are not trying, and I know the enormity of the task that they have, but I can tell you that we do not think it is working right yet.

I see my time is almost up. I want to hit one other issue very quickly. Just as an example of how issues are maybe addressed by overkill or by too rigid an approach—Two days ago the Salmon River below Stanley was closed entirely to all float boating. And the reason was because some salmon on some redds had been spooked. The float boaters were already portaging around those redds, and I think something needed to be done to be sure that it was further addressed. But to me it seems that closing the entire river because of an incident at one location is a bit of an overkill, and that is part of the problem that we end up dealing with.

Mr. SCHMITTEN. Mr. Crapo, it is the first time I think I have ever heard that the entire river has been closed. What I have found is the boaters have been very willing to work with us, have identified these areas, have encouraged people to stay out; put up signs or floats. I have not heard this, so let me ask what the situation is.

Usually, we are the ones that are consulted upon, but it is the forest service or BLM that actually makes the final call.

Mr. CRAPO. That is right. And I, myself, do not know who made this final call or why, and I just got the information myself about an hour ago. But it was just one more of those circumstances that——

Mr. SCHMITTEN. Why do I not call you before the end of the day with what I find out.

Mr. CRAPO. All right, I would appreciate that.

Mr. SAXTON. Mr. Crapo, you and I had a conversation the other day about your frustration with the lack of cooperation, relative to the development of a management plan in the Northwest.

Mr. CRAPO. Yes.

Mr. SAXTON. Would you like to take a minute just to pursue that. I found your discussion very interesting, and I know how deeply important this is to you. So if you would like to take just a minute to——

Mr. CRAPO. If I could. That was the issue I started out with, and I wanted to move quickly into this other one.

Mr. Schmitten, as I indicated in my initial comments, we are trying in the State of Idaho to put together—and I am sure you are aware of this—to put together a system by which we bring together the necessary parties to find solutions. Clearly, science has to drive those solutions.

Right now I have learned in this particular issue that for many years the statement that science has to drive the issue did not really solve anything, because everybody brought in their own science, and it was just a continuation of debate under the name of the science. But it seems to me that recently, with the Independent Science Advisory Board, which Will Stelle has been very instrumental in putting together, and I think was a good step.

We are starting to get some consensus on some areas where science will tell us we should move, but it seems to me that consensus is what the State of Idaho tried to rely on, and it is that scientific consensus that helped us build the consensus in the State of Idaho, which was supported by the other states, and the tribes and fishery managers. And yet, we still, in the process when we had, I think, virtual dominance of support for the approach that the state brought in the region—We still had the agency, NMFS reject it, in the name of science.

And so I guess the question I am posing here, is how can we get past saying we need to work on good science, and get past all those statement about how we need to have regional cooperation, to where we really have it, and we really do not have efforts of consensus building that is simply then unsuccessful, as a Federal agency on its own essentially says no.

Mr. SCHMITTEN. I certainly do not have all the technical details. But, certainly, I would put a lot of faith in the Independent Science Board; it was designed to certify what science is coming out. And I think there is a second piece that is needed, and that is some sort of dispute mechanism, that when there are these fundamental differences as we find, especially on the issue of Northwest salmon, that there is some process, independent from the process, someone can oversee and say, yes, this is where we go.

Currently what is happening is the parties run to court. That is a much protracted, drawn out situation. We received a positive ruling, but I am not sure what a positive ruling is if the parties are not behind it. So I think a dispute mechanism; it would be important there.

Mr. CRAPO. Well, I would look forward to working closely with you and with Katie McGinty at CEQ, and others at this level. But I can tell you, there is just an extreme level of frustration in my state. And it is not just with regard to the salmon recovery issue. I think part of it is simply, that we have to sit down and make sure we are all working off the same page in terms of where we want to head, because it is a consistent problem now in my district, with regard to the activities that agency managers are involved in, whether they are BLM or Forest Service, or whatever, with the overlay of NMFS, a biological opinion activities with regard to salmon and steelhead recovery.

Mr. SAXTON. Mr. Crapo, I do not want to belabor this subject, but it seems to me that when we were discussing this, you said that there was something in the neighborhood of 15 stakeholders groups that sat down to try to develop this consensus plan, and that 14 of the 15 agreed, including the U.S. Fish and Wildlife Service.

Mr. CRAPO. That is right. That was actually 12 out of 13.

Mr. SAXTON. Twelve out of thirteen.

Mr. CRAPO. There were 13 fishery managers, representatives; whether it be the four states or tribes or the U.S. Fish and Wildlife and so forth at the meeting where Idaho proposed its plan. And I realize there have been a lot of meetings. Whenever I say this there are responses about, well, maybe it was not really this way or that way. The bottom line is, is I have pursued this in testimony in Idaho as well as in the previous hearing.

Well, what I want to say to you, Mr. Chairman, is that in rebuttal, later on, some from the NMFS said—Well, some of them did not actually support it; they just did not object to it. But at the meeting there was only one objection to the Idaho approach, and there was significant support for the objection from many groups, and we interpreted that as being support from all 12 of those who did not object. But there were at least a vast majority of them who did support it. And yet we still were not able to proceed because NMFS overrode it. And that is one of the things that is causing an extreme level of frustration, in Idaho, and I think in the region, with the way that this supposed cooperative effort is working out.

And I will say that the region that they stated that they could not agree with it, is because we were proposing a different approach to recover than what they interpret the scientific answer to be. But again, I believe that their own science board would differ with them, and I believe that the vast majority of the other fishery managers differ with them. But so, we are into a debate on science again, but the point is, as we try to build consensus here, we were getting there in the region, but then were not able to move because of NMFS refusal to agree.

Mr. SCHMITTEN. I understand there was to be a meeting yesterday on the focus of science in Idaho, and I have not heard the results of that. But we were asked if we would go over and sit down, and spend an entire day for the public state of fish and wildlife folks, to go through science, and I hope that that was a positive session.

Mr. CRAPO. I hope so too. And I just want to say, I am not suggesting that there is just an absolute recalcitrance here. There is a very willing statement; or the officials are very willing to work with us, it is just that when we get down the road to where we hope we can get some results of this effort to develop collaboration and consensus, we run into a consistent refusal, and that is the concern that we face.

Thank you, Mr. Chairman.

Mr. SAXTON. Thank you, Mr. Crapo.

The gentlemen from Massachusetts, Mr. Tierney, has joined us. Mr. Tierney is not a Member of the Committee, but through the unanimous consent request at the opening of the hearing, we will ask him for his participation and questions at this time.

Mr. TIERNEY. Thank you, Mr. Chairman. I thank my colleagues for giving me this opportunity, Mr. Schmitten and gentlemen.

I share some of these questions, or all of these questions that I am about to ask with Representative Delahunt, also from the Commonwealth of Massachusetts, on the areas of considerable concern.

Let me start by just saying that on August 28th NMFS issued a mid-water trawl gear authorization letter to the Atlantic Star. The Atlantic Star is a 360 foot-long factory trawler, and that permit would allow it to fish for herring and mackerel in the areas on the Georges Bank and the Gulf of Maine, with much less than 6 inches. In order for that exemption to be issued it was supposed to be demonstrated that the fishing activity would have less than a 5 percent by-catch of groundfish. And given that the Atlantic Star has never caught a single fish, and we have not had any vessel of this size fishing in the Georges Bank for more than 2 decades, how is it that you could certify now that the Atlantic Star would have less than a 5 percent by-catch rate; and do not vessels and other fisheries seeking such exemptions have to provide data that demonstrates their by-catch will be less than 5 percent?

Mr. MATLOCK. I was checking to see whether or not the permit included an observer requirement, because I do not remember for certain whether or not it does.

Mr. TIERNEY. It does not appear to. That was one of my next questions; as why does it not, and it does not at all appear to.

Mr. MATLOCK. I will have to check and followup to make sure that my answer to you is correct—whether or not it does—because I do not know.

But at least with the data that we have in hand, and the regulations as they are currently written, the assessment by the regional director, who is authorized to issue the permit, was that the expected by-catch would be less than 5 percent level at which the determination to issue a permit is made.

The data that we have throughout the entire area is in many cases very sparse. It is not the best in the world; it is not everything you would want. But the regulations require that we use the best available information to make that determination, and in this case that was done that were available.

Mr. TIERNEY. This data—I mean we have not had a boat of that size for over 2 decades, so how reliable can that data be?

Mr. MATLOCK. Well, it is primarily looking at what that gear of that mesh size catches, as opposed to what a vessel of a certain size does or does not catch. So the basis upon which a decision is made is more on the gear itself than the vessel.

Mr. TIERNEY. Well, you would agree with me that that data is a little bit weak, considerably weak?

Mr. MATLOCK. Well, I cannot at this point because I am not familiar with the specific data, so I would not want to agree or disagree.

Mr. TIERNEY. Well, let us assume that the by-catch rate is 5 percent; that would be 2,500 metric tons of groundfish by-catch, that they could harvest on 50,000 metric tons of mackerel and herring. I think that would be a conservative estimate; given their harvest capacity of 250 metric tons a day.

If that is the case, the entire target total allowable catch, for the Georges Bank area, both the cod, haddock and the flounders, only about 5,000 metric tons; a by-catch of 2,500 metric tons is significant, very significant. So what kind of an impact is that going to have, and how do you again—going back on that—which seems to me a very weak data—What kind of comfort level can you possibly have that that is not going to be harmful to the ground fishermen?

Mr. MATLOCK. The kind of gear that is involved, which is a midwater trawl, would be expected to have a very, very small by-catch of groundfish. So to operate on a premise that the by-catch is 5 percent is inconsistent really with the decision, and the basis upon which the decision was made by the regional director. But assuming that the by-catch were 5 percent, then I believe that the conclusions you have reached are certainly consistent with that amount of catch. They are legitimate concerns to have, and I would suspect that if the catches of that magnitude were expected that a permit may not have been issued.

Mr. TIERNEY. Well, I just want to press this a little bit—trying not to be argumentative—but it sounds to me that you are not totally comfortable with the data or with the assumptions that are being made. I can assure you that Mr. Delahunt and I are not comfortable at all with this sort of gratuitous willingness to take data that is 2 decades old, and assumptions based on the equipment as opposed to any history—based on reality—and make sort of general conclusions that are going to have a considerable effect on ground fishermen; in an area that 20 years ago suffered devastation, and these people were the ones that suffered the biggest impact of that.

What comfort level can you give Mr. Delahunt and I, that you might go back and revisit this, and have to insist on some sort of more reliable data, and less assumption, and less wishing, that seems to be going here, because there are considerable unknowns that appear to exist. Why would we not seek some assurances and some comfort that are based on hard facts, and not assumptions, before we went and issued a permit. Why would we not wait until there was a plan in effect before we did this, and why are we being so precipitous?

Mr. MATLOCK. Goodness, that is several of them together.

Mr. TIERNEY. They all pretty much say the same thing though, so it should not be hard.

Mr. MATLOCK. Yes. It might be worthwhile to make sure you know that the permit allows for the catch of both herring and mackerel.

Mr. TIERNEY. Right.

Mr. MATLOCK. There is a plan in place for mackerels, so that is the reason for making sure that you know the permit is for both. There is a requirement that we use—the best available data at the time that we get a permit—to make a decision. The conclusion reached by the regional director was that those data supported issuing the permit.

Knowing Andy Rosenberg, who is the RD up there, and knowing his intent to make sure that we do look further at what we have done, I would think that he would be already making the kind of effort that you want made, in terms of making sure that the issuance of the permit is not doing damage to the species being called by-catch.

Mr. TIERNEY. Is there no provision within the context of your rules or whatever, to say that when you have such dated data, when you have such unreliable data, that you are not going to try and construe some result out of that; that instead because of the sparsity of information and data that really could sensibly be called reliable, that you will put off a decision until a plan is done?

Mr. MATLOCK. In essence, the regulations are that we use the best available data.

Mr. TIERNEY. So if it is bad data, and it is outdated data, but it is the best that you have, you go with that?

Mr. MATLOCK. Well, if it is bad data, and you know it, then it is not the best available.

Mr. TIERNEY. Well, it is 20-year old data. Would you think that that would be bad or weak, or somewhat less than reliable data?

Mr. MATLOCK. In general, the catches of things in trawls do not change very much, and the composition of things caught in trawls do not change very much, even though the time period may change. So, again, the data that Andy had to look at, I am sure that he concluded, were the best available.

Mr. TIERNEY. Well, let me close, and I really appreciate the opportunity. Can I ask you, on behalf of Mr. Delahunt and I, to revisit that issue again, and to get in touch with our offices so that we can continue this. I know the chairman and others are concerned with this issue also, and we have a very deep concern that this was done precipitously perhaps, and we would like to work with you to try and stop this from becoming a disaster as it did 20 years ago.

Mr. MATLOCK. Yes, sir.

Mr. TIERNEY. Thank you. And thank you, again, Mr. Chairman.

Mr. SAXTON. I thank the gentleman for a very good question.

This is an example—if you have time to stay—This is an example of what causes a great deal of concern among, not only Members of Congress, but members of the American commercial and recreational fishing community.

This permit was issued apparently on August 28th. Now let me just review for a minute some things that we have already established.

I think there is general agreement between Congress and NMFS, that we have a difficult situation with regard to our successes, because our successes, almost always, if not always, follow disastrous situations. We know that economic pressure causes the activities in most cases that create overfishing. We also know that throughout the history of our regulatory process we have had underutilized species that become overcapitalized, and therefore fall into a most undesirable state or situation.

We also know that the House of Representatives recently passed a bill—before August, on July 28th; passed a bill by voice vote, relative to this issue, where we clearly expressed our opinion on this issue, and we also know the Senate of the United States is currently developing a consensus relative to this herring, mackerel issue. And yet, based on what is at best described here today, as lukewarm evidence, if any evidence at all; you saw fit to issue this permit with all of those circumstances that I described. And I would like to know why.

I do not understand this. I do not think there is any science to justify it. Public opinion was clearly against it. The Congress of the United States, through the House of Representatives, spoke loudly. The Senate is developing, I believe, a very similar consensus; and yet with the history of fishery mismanagement through these same cycles, you issued the permit. Please explain it to me.

Mr. SCHMITTEN. Mr. Chairman, I will attempt that. And I am sure that I do not have all the thought processes that the region must have went through. But it is fairly clear that the stock abundance—in fact the latest SA, and the SA is the stock analysis. It is done every 2 years. It is shown that there is between 250,000 to a million metric tons of herring available.

The Council saw fit to reduce that down to 89.2 thousand metric tons that would be available for any fishery. So there is a huge safety net there.

Mr. SAXTON. Excuse, me. Are you talking about groundfish?

Mr. SCHMITTEN. I am talking about herring. I will take it specifically back then to the 5 percent. That is an upward figure. I am sure what went through their minds—and I will check this out because I am speculating as others might here—that it is a midwater trawl fishery, which tradition has shown is a very clean fishery, not a bottom fishery, with roller gears picking up bottom groundfish. So that is a bit of a buffer.

Five percent is a figure that the Council has allowed and sustained; it came from it. I will look it at it, but we have to realize that this only a permit. These people can fish right today without a permit. They have asked for a permit in an exclusive area——

Mr. SAXTON. With a smaller than a 6-inch mesh?

Mr. SCHMITTEN. What is that?

Mr. SAXTON. With a smaller than a 6-inch mesh?

Mr. SCHMITTEN. With a smaller—And I do not know the authorized get.

Mr. SAXTON. But why would it be necessary to get an exemption?

Mr. SCHMITTEN. Because there were going into an area that fishing is not allowed normally with this gear.

Mr. SAXTON. So you granted them a wider opportunity to fish in areas where they cannot fish with the smaller net.

Mr. SCHMITTEN. Yes.

Mr. SAXTON. I think that gets us back to the point, does it not? Feel free to jump in, Mr. Tierney.

Mr. TIERNEY. I hate to gang up, but we did go a little circular route there, but we got back to the point. You have just enhanced their ability to fish with a smaller net size in an area that we had prohibited. You waived it. We are wondering why? If they can fish already to certain areas, let them stay there and get some reliable data before you start expanding it on the basis of assumptions and guesswork.

Mr. SCHMITTEN. It is prohibited for groundfish, not for herring. The prohibition is on ground fish, not for herring. And so they have asked the right to fish in these areas that are, right now, closed for everything.

Mr. SAXTON. Two days ago you told me you would stop—I think you said. I do not want to mischaracterize you. You told me you would stop them from fishing if you had the ability to do it, but you cannot do it.

Mr. SCHMITTEN. No, I said that if they approach—If they take their quota, we can stop them, and yes, we will.

Mr. TIERNEY. Are you going to have somebody on that boat monitoring it?

Mr. SCHMITTEN. And as Doctor Matlock said, I do not know the answer to that.

Mr. TIERNEY. Well, if the answer is no so far, will you change that?

Mr. SCHMITTEN. We could require observer coverage. In fact, I may be wrong, but I think even the vessel at one time at the previous hearing indicated that they would take an observer. I would want to check that. But that is a point that I am very willing to look and engage in.

Mr. SAXTON. It seems to me that you have all made a decision here, which may or may not have been the right one. But it seems to me that you obviously made a decision that runs counter to another Federal—I mean, we have a situation in New England waters where we are spending millions of Federal dollars to buy back boats because of the collapse of the fishery. And yet, you issued a permit, which enhances the ability to catch the fish which we are trying to help recover. And that along with all the other things——

Did you get any pressure from anywhere to make this decision, to issue this permit? Did the White House contact you relative to this permit?

Mr. SCHMITTEN. The answer is no. In fact, I do not authorize the permit. That is an issue that is authorized right within the region, so that was not something I even saw or knew about. I was aware of it, but it is not an action out of Washington, DC.

Mr. SAXTON. Well what role do you play in the issuance of the permit?

Mr. SCHMITTEN. Just to be aware; to raise the questions that——

Mr. SAXTON. Do you have the power to veto the permit?

Mr. SCHMITTEN. I do not know. The authorization rests with the regional administrator, not with the assistant administrator.

Mr. SAXTON. Would that be Dr. Andy Rosenberg?

Mr. SCHMITTEN. Yes.

Mr. SAXTON. And you do not have the authority to turn his decision around?

Mr. SCHMITTEN. On certain matters, yes. On this——

Mr. SAXTON. Would this be one of those——

Mr. SCHMITTEN. [continuing] a permit, I do not know.

The Council has just told me, I could take a legal means of withdrawing my delegation to the regional administrator or his right to do that, so there is a tool available.

Mr. SAXTON. Can you explain what that means?

Mr. SCHMITTEN. I would send a letter—it would have to be in writing, I am sure—that he no longer has the authority to issue permits. I am with withdrawing that authority that was delegated initially to me.

Mr. SAXTON. So you are saying that you clearly had the ability to do something about this if you had thought that would have been the right course to follow.

Mr. SCHMITTEN. I am saying there is a means of doing that. I was not involved in the decision. I really trust his judgment. He is a credible scientist before he even became a manager. So, I am sure that I will be able to provide you a lot of explanation that I do not have right now.

Mr. SAXTON. The concern that I have is, is that the overwhelming majority of the American people who are knowledgeable about and concerned about this issue, felt different than the individual that you trusted to make this decision; and it raises some questions about why this happened.

One ship captain that I know of, who is interested in this decision that you made, or that your agency made—There is an amendment, knows as Amendment 7, to the New England ground fishery plan that speaks to this. It seems to me that it is very clear that it says, that there needs to be evidence through history of by-catch, which does not appear to exist, and yet the permit was issued anyway. And that is why I ask about whether or not the White House——

Did State Department contact you?

Mr. SCHMITTEN. No, I had no contact whatsoever on this issue. In fact the resulting permit was granted before I was aware of it even. It is not the sort of thing that I normally would be involved in.

Mr. SAXTON. Well, I guess I would be wondering if you are going to revisit this, or you have any intention of revisiting this in the very near future.

It seems to me this whole assumption that there be less than 5 percent by-catch involves around your faith in an as yet unknown captain, and that captain's ability to drag the nets appropriately or whatever. I think that we really have to rely on you to acknowledge all of the facts and circumstances that the chairman has pointed out, and hopefuly revisit this with the thought in mind that if the data is not any better that has been represented here today, we might get a different result.

Mr. SCHMITTEN. Mr. Tierney, I can guarantee you—my word is usually pretty good—we will call the regional administrator, and I will ask him the issues that you have raised, your concerns about observer coverage, and I will find those matters out.

Mr. SAXTON. Let me just finish this, and I do not want to carry this on any longer. But just let me finish it with an observation, and just ask you to respond to it.

When Andy Rosenberg was here, through a question which I believe I asked—I asked him about the sustainable limit, and he said 150,000 metric tons was the number. Is that correct? Annually?

Mr. SCHMITTEN. The SA—as I was reading this over this morning—had 250 to—and this is short-term utilization—up to a million. The DAH is set at around 90,000, so there is an extreme lowering in a conservative approach to what is actually available. So 90,000—Am I correct?

I am hearing all sorts of comments. But the bottom line is that they have taken a very conservative approach of what the quota would be for anyone fishing out there right now. It will not harm these fish in any range. If you take the most liberal range, it will not harm these fish.

Mr. SAXTON. What is the more conservative range?

Mr. SCHMITTEN. What the Council has offered. That is the 90,000 metric tons. That is extremely conservative.

Mr. SAXTON. And the more liberal range.

Mr. SCHMITTEN. Goes upwards to—you have indicated 150; I thought it was 250 on the bottom end, or higher.

Mr. SAXTON. Now, remembering the arithmetic on this issue from the last time we spoke about it here, it seems to me that the Atlantic Star alone has the capacity to take 50,000 metric tons a year, and that smaller boats are currently capable of taking about 31,000 metric tons a year. Are those good numbers?

Mr. SCHMITTEN. I can verify the 50,000, I just do not have the small boat data.

Mr. SAXTON. Well, at what point then would you think it would be a good idea to address the issue that is pointed out by this advertisement that occurred in National Fisherman, for captains, mates, engineers and deck hands, to man to freezer trawlers, located in the U.S., to enter into the herring and mackerel fishery, which we can assume also have the capability of taking something in the neighborhood of 50,000 metric tons a year?

Mr. SCHMITTEN. Mr. Chairman, I think we are mixing both herring and mackerel. But for the herring fishery, and specifically for the vessel that has requested the permit, and it has been granted, we certainly—all the deliveries to my understanding will be delivered shore-side. We will be monitoring those very closely. As they approach their 50,000, our intent is to shut that fishery down.

Mr. SAXTON. And that will shut the small boats down that we have to buy back if they——

Mr. SCHMITTEN. If their authorization is only 50,000, and there is 90,000 available, there is still 40,000 out there for other vessels.

Mr. TIERNEY. Is there in fact a requirement or a limitation that they can only get 50,000? They can get more than that.

Mr. MATLOCK. No. As far as I know there is not a requirement that limits them to any total amount. Again, this is an open-access fishery. There is, however, a total catch that has been set by the Atlantic States Main Fisheries Commission for herring. There is also a total catch that has been set by the Fishermen Management Plan of the Mid-Atlantic Council for mackerel. So depending upon which species about we are talking, the situation is different.

Mr. SAXTON. I know Mr. Gilchrest wants to ask a question, and just a minute I am going to ask him to come over here and ask it, because I have to go talk with the Speaker about another matter.

But let me just conclude for my part by saying this. I am concerned about the herring and mackerel fishery, but for my purposes today, the herring and mackerel fishery, and the situation involving the Atlantic Star, some number of smaller boats, and two additional boats, which appear to be on the horizon; just provide an excellent example of you all trying to defend what I think is an indefensible fishery management policy.

We are entering—as I said in my opening statement—into another part of the cycle of identifying an underutilized species, and letting it become overcapitalized. And sometimes you all say you cannot do anything about it; sometimes you say you can withdraw the authority of the person that issues the permit. Sometimes you can issue exemptions for smaller net size.

It leaves me pretty speechless to know what to say to you. I guess I can just say I look forward to working with you in the future, so that we can come to some resolution of this general matter, which I will not describe again.

So, I thank you for being here today. I am going to leave Mr. Gilchrest here in the chair, while I go visit with the leadership about some other issues. And I thank you for your candor with us, and thank you for being with us.

And, Mr. Gilchrest, you are in charge. May I ask unanimous consent, and ask you, there are some questions from other members, including the chairman of the Full Committee, which we would like to ask unanimous consent be submitted to you. And Mr. Young has asked that you try to answer them within 2 weeks.

Mr. SCHMITTEN. I will do that for you. Mr. Chairman, as you leave, I think where we are together is the desirability of having a plan in place prior to these actions occurring. I think that is preferable, and I think that is where you are. That is also where I am. I think that is the type of thing that would help.

I happen to also believe that the Council is a right mechanism. You have authorized them through us, through the Secretary, empowered them to develop the plan, and I think that would be most helpful. It is certainly the precautionary approach which we all support.

Mr. SAXTON. Thank you. And I ask unanimous consent that all members have the opportunity to submit questions in writing.

Mr. GILCHREST. [presiding] Thank you, Mr. Chairman. I just have a couple of quick questions, Mr. Schmitten.

I am just curious. Who owns the Atlantic Star?

Mr. SCHMITTEN. I do not know by name, and I do know the keypoint, and that is, it is an American or domestic vessel; therefore it is afforded the right in an open-access fishery——

Mr. GILCHREST. When permits are issued does NMFS routinely want to now who the owner of the boat is?

Mr. SCHMITTEN. Yes, it is a requirement that we do know the owner of the vessel.

Mr. GILCHREST. I was just told it is 51 percent U.S., 49 percent Dutch.

Mr. SCHMITTEN. That is exactly right.

Mr. GILCHREST. And the Dutch are heavily lobbying for the fishery. I am just repeating what I just heard.

Mr. SCHMITTEN. I do not know about the last point because I have never met with the Dutch. But this is classified then as an American vessel, at the 51 percent. That is not unusual in many of the large vessels.

Mr. GILCHREST. Do you have any idea who then owns the other two vessels that were in the newspaper advertisement?

Mr. SCHMITTEN. I do not. I would be curious who the vessels are, because there is a list of vessels on the East Coast currently that have permits; the couple have been identified on the West Coast, so I do not know the owners. But again, if they have permits, they are U.S. vessels.

Mr. GILCHREST. Is there some concern about, if you have 49 percent Dutch, what the other 51 percent is made up of?

I mean, just to give sort of a peripheral example. If an 80-year old man marries a 20-year old girl from Thailand, and brings her into the United States as his wife, and she applies for citizenship, INS wonders if they are going to stay together for very long, or did she just marry this guy to come to the United States.

In this vein, is there any, either legal or peripheral look at the make-up of the ownership, if it is so close, 49 percent foreign and 51 percent domestic?

Mr. SCHMITTEN. I am unaware of that. I think it is beyond our scope, other than identifying whether or not it is American-owned, with a majority of ownership in American hands.

Mr. GILCHREST. So the Department of Commerce has no interest in that.

Mr. SCHMITTEN. I am not sure if I could say yes or no to that. But we are not required by law to go beyond the identification that it is American-owned by majority percentage.

Mr. GILCHREST. How do you know it is 51 percent-owned by U.S. without knowing who those U.S. people are? Is it a bank?

Mr. SCHMITTEN. Let me ask someone much smarter than I.

Mr. Chairman, there actually is a good answer to this, or a reasonable one.

Mr. GILCHREST. Great.

Mr. SCHMITTEN. The Coast Guard is in charge of examining the documentation.

Mr. GILCHREST. So if I wanted that information I could ask the Coast Guard.

Mr. SCHMITTEN. And they look into actually who the owners are.

Mr. GILCHREST. Is there any collaboration between the Coast Guard and NMFS as far as this——

Mr. SCHMITTEN. We need to know that it is American-owned; that is our part.

Mr. GILCHREST. Does NMFS ever, every once in a while, discuss the issue with the Coast Guard?

Mr. SCHMITTEN. We have to find out that it has U.S. documentation on all vessels, and that is on a regular basis.

Mr. GILCHREST. Just a quick question on dredging in the Chesapeake Bay. I noticed in your brochure you mentioned a popular island as a successful venture for beneficiary use of dredged material, or as it is called today, dredge spoil.

The Chesapeake Bay has a long history of being a part of a positive fisher and recreational area, and so on. And the Governor now has a plan to dredge the port, and the approach channels, and also a plan to dispose of that dredge material, one of which is Popular Island, which a lot of people have signed off on as being very positive.

One of the other proposals in the plan is to build with the dredge material at least one 6-mile around man-made island, off of Kent Island.

Is NMFS aware of the Governor's plan? Are they involved in determining whether or not these areas are a good idea? Has NMFS signed off on any of these things?

Mr. SCHMITTEN. Mr. Gilchrest, I need to go to our Chesapeake Bay office and ask. I know we are aware, and like you, I have read the issues. Generally what we have to do is certify that the spoils are not contaminated. Also, since the Corps of Engineers most often does the removal, they have to consult with us if there is any endangered species in the process. And I have been involved in multiple cases where we—man—the siting where the spoils are actually located, especially if they are contaminated.

I will get some details on this one.

Mr. GILCHREST. I guess my question is, does NMFS have any long-range vision of areas that competing interests are involved, as far as the health of the fishery in dredging. And for example, it is very difficult now to find places to put dredged material in the Chesapeake Bay from the Port of Baltimore. And if we look out over 50 years, the plan right now that may or may not go into effect, is suppose to last about 20 years.

Is there anybody in NOAA or NMFS that says, well, the Port of Baltimore, Wilmington, Philadelphia, New York, Charleston, Norfolk, Jacksonville—it is going to be difficult to sustain all of these ports in the long range, as far as where we are going to put all the dredged material, and the cost of this disposal of the dredged material?

Mr. EVANS. Let me take that one. I think NOAA's principle involvement in most of the dredging issues that you are talking about, putting aside for a second the question of contaminated spills and their interaction with possible water action with endangered species, comes through the Coastals Zone Management program, which is run by the states.

And so, our involvement, relative to how those projects would be permitted, would be in working with the state coastal zone programs, and if there would be need in almost all of those cases, since they are Corps of Engineers projects for Federal consistency determinations. And I think that would probably be the mechanism that is in place right now for NOAA to be involved in those actions. It would be more through the coastal zone management side of our programs than through NMFS programs.

As we move further down the line, dealing with essential fish habitat, NMFS may or may not, depending upon how the regulations work out, become more involved in those decisions. But that would be the connection.

Mr. GILCHREST. Thank you. One last quick question. It has nothing to do with anything we have discussed so far, but I was curious.

I was curious when I was in Alaska this summer with the Coast Guard, to find out at least from one fisherman's perspective—so I do not have any data to back up this statement.

Some of the fisherman in Kodiak said that there is about the same number of farm-raised salmon sold on the world market as salmon caught in the Gulf of Alaska, and that the farm-raised salmon is going to continue to increase, and make it very difficult for fishermen in the Gulf of Alaska to sustain that—I guess to sustain the fact that they will or will not catch salmon anymore because the price is going down so low.

Is there some degree of truth to that, and if so, what is the future impact of wild salmon being caught in the Gulf of Alaska?

Mr. SCHMITTEN. It is true in countries such as Norway, Canada, Chile—are producing high quality farm-raised fish. And what I think the domestic markets are looking at is a continuous supply over a 12-month timeframe of a certain size product, and where wild capture is in high peaks of abundance; but uncertainty over long periods of time. More and more of the supermarkets are turning to these consistent suppliers. And I think because of the high amount of raised fish it is depressing the prices.

I guess the only difference is that sockeye are not being raised, and that is the prime species in Bristol Bay, to any degree; nor are pink salmon. So that will still be a predominantly wild capture stock. But they are competing with high quality chinook, coho and chum salmon, that this is going to keep the price down—my view—for quite a while.

Mr. GILCHREST. Do you think the average consumer knows the difference between those species?

Mr. SCHMITTEN. The average consumer? No. They will go to the market, and if it looks bright, shiny, smells fresh, it is salmon; they will buy it.

Mr. GILCHREST. Great. Well, since I am the only one left here, and my staff wants to go to lunch—Thank you very much, gentlemen, for your testimony. And I am behanded the gavel. The hearing is adjourned.

[Whereupon, at 12:25, the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. Chairman, thank you for holding this hearing on the National Marine Fisheries Service's role in managing the nation's fishery resources.

While I realize this is a thankless job, there are a number of areas where this Subcommittee can and should continue its oversight responsibilities. As all here are aware, articles on a variety of fisheries issues have been common in the newspapers in the last few years as more and more interest in the marine world is shown. We have experienced a fishery disaster in the New England groundfish fishery, we have experienced a serious problem in some west coast fisheries, and in the last two years we have seen both the boom and the bust cycle for salmon harvests off Alaska.

While these are not all problems caused or ignored by NMFS, they are problems that need to be addressed. This agency has a responsibility to conduct timely and necessary research into stock populations. This agency has a responsibility to the American public to maximize the harvest of fishery resources as a stable and inexpensive source of protein as long as it is in a sustainable manner. This agency has a responsibility to reduce the amount of waste in the harvesting of fishery resources. This agency also, more and more, has a responsibility to those who make their living from the ocean.

These are not easy duties and dealing with the uncertainties in the amount of science that is out there on the marine environment make this job even more difficult. It is this Subcommittee's duty to oversee the activities of the National Marine Fisheries Service and to make suggestions or develop priorities when we feel the agency is not fulfilling it's statutory duties or is ignoring Congressional mandates.

I have a number of parochial issues which I will raise today and I know a number of other Members also have issues which affect their constituents to raise with you today. I look forward to hearing your thoughts and Members' questions.

Thank you, Mr. Chairman.

TESTIMONY OF
ROLLAND A. SCHMITTEN
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 1997

Mr. Chairman and members of the Committee, I am delighted with the opportunity to discuss the management of our Nation's marine fisheries. These are, indeed, challenging times for those of us involved in this very important sector of our culture and economy. We are but one among many of the world's coastal countries that are coping with the challenges that fishery failures bring. However, we will be among the biggest beneficiaries to reap the rewards of making the very difficult decisions necessary to transition to sustainable fisheries. The United States is certainly among the leaders in this arena, and I am pleased to be leading an agency that plays such a pivotal role in shaping the future of marine fisheries globally.

We are making progress toward the goal of improving the health of marine fisheries, both domestically and internationally. Hopefully, my discussion today will lead you to the same conclusion. I will present a very brief description of the status of these fisheries within an historical, but evolving, international context followed by a discussion of the progress being made within the United States. I would like to specifically highlight recent Congressional action and the role the National Marine Fisheries Service is playing in implementing and directing the management of fish stocks. I also want to note that the underpinning of my discussion regarding fisheries management is the need for a solid scientific foundation. The stock assessments and scientific advice provided by our researchers are the basis for sound policies governing the use and conservation of living marine resources.

As a global society, we are relatively new at managing marine fisheries. Our ability to catch fish in salt water has existed far longer than our attempts to control the harvest. In fact, serious management of United States marine fisheries beyond state waters began only 20 years ago. The passage of the Fishery Conservation and Management Act (FCMA) in 1976 was the first comprehensive federal legislation to address the subject. At the time it was considered revolutionary in its scope and vision. I believe that view continues to be justified. The FCMA had as its purpose the elimination of foreign fishing within the area between the State's outer Territorial Sea Limits (usually 3 miles) and 200 miles seaward of that boundary. The need for the FCMA, later to become titled the Magnuson Fishery Conservation and Management Act (MFCMA), was identified as correcting the negative impact that foreign fishermen were having on fish stocks. However, the reaction of our fisheries management system at that time was not consistent with the premise that these resources had been overexploited. The U.S. expectation was that foreign fishing would be replaced by the development of domestic fishing capacity. There was apparently little awareness of the probable impact that fishing mortality, continued by domestic fishermen at the level imposed earlier by foreign fishermen, would have on fish stocks. As a result, domestic fishing capacity increases were encouraged, and generally unconstrained. By the 1990's, the primary objective of the FCMA was accomplished --foreign fishing was gone. However, the secondary objective--to stop overfishing--was far from met. Indeed, the notion that overfishing could, and indeed, had occurred was just being realized generally throughout the world's fishing community.

Historically, marine fishery resources were falsely assumed to be so vast and the possible impacts of fish to be so small that fishing was essentially unregulated. The epoch from 1885 to 1950 was a period of slowly increasing research in fisheries. Marine fishing regulations were very few. However, during the last decade, fisheries experts have become increasingly concerned about the overall state and trends in global marine fisheries. After 1989, world harvests seemed to plateau and irregularly decline; evidence increased that a large share of the traditional and highly prized species were overfished or at least fully harvested; some traditional species suffered major stock declines; signs of excess capacity in the harvesting sector were everywhere; disturbingly high levels of bycatch in the capture fisheries sector caused increasing concerns; and habitat degradation, especially of the coastal environment, became a higher priority issue internationally and in many individual nations. These facts, coupled with technology advances, were outpacing management constraints and signaled trouble for the fisheries.

We now realize that fishing can and has already had profound effects on marine fish stocks. This became even more obvious when the FAO reported in 1995 that about 70 percent of the world's commercially important marine fish populations were fully fished, overexploited, depleted, or slowly recovering. This international recognition of the seriousness of the situation culminated in the creation of the Code of

Conduct for Responsible Fishing in 1995, a wide-ranging, comprehensive document that addresses all aspects of fisheries issues. Even with this recognition our efforts to "stem the tide" on fishing have lagged far behind the increase in our capacity to catch fish. In the face of increasing competition and diminishing economic returns, the concept of reducing catch in the short term for improved long-term sustainability has generally been met with stiff opposition. An economically unhealthy fishing industry cannot afford mandatory catch reductions, even temporarily. The resultant stock declines have been met with even more unsustainable fishing effort. This situation of excess fishing capacity has been further exacerbated by the application of technological advances in identifying, tracking, and catching fish. NMFS is now faced with the daunting task of stopping and, indeed, reversing the expansion of our capabilities to capture fish--an expansion which has been diligently pursued in the U.S. As difficult as the challenge may be, however, the long-term future of marine fisheries demands no less than our most immediate and focused attention. This attention has manifested itself in the form of the NMFS Strategic Plan.

Before I move to the NMFS Strategic Plan I would like to say a word about the Law of the Sea Convention and stress how important it is --from the standpoint of international fisheries conservation-- for the U.S. to become a party. At present, 120 countries have joined the Convention, including almost all industrialized nations except the U.S. Becoming a Party would significantly enhance U.S. leadership in the international fisheries arena. Indeed, our failure to join undermines U.S. credibility in this arena, credibility that is essential to our efforts to find solutions to the pressing problems facing the world's fisheries resources. The Convention provides the very legal foundation for important agreements such as the Agreement on Straddling Stocks and Highly Migratory Species, and the means to help conserve international stocks, such as tuna, that are economically important to us.

NMFS STRATEGIC PLAN

NMFS recently completed a review of its programmatic priorities and the resulting Fisheries Strategic Plan (Plan) is designed to guide the Agency for the next five years (attached). The plan recognizes the shortcomings of prior management regimes and is grounded in the knowledge that the agency must pursue an aggressive, conservation oriented policy towards fisheries management. This must be accomplished in the face of additional management requirements and workforce reductions. Through the strategic planning process NMFS has identified clear priorities and is linking these goals to the agency's operational activities and budget priorities. I am proud to tell you that the NMFS Strategic Plan is one of the first in the government to meet the requirement of the Government Performance and Results Act of 1993 (GPRA) which shifts the focus of performance measures from activity-based objectives to results-based objectives. In fact, this plan is being held up as a model for other government agencies. The Plan has defined three broad strategic goals: Build Sustainable Fisheries, Recover Protected Species, and Healthy Living Marine Resource Habitat. The objectives of each goal are summarized below.

Sustainable Fisheries The sustainable fishery goal reflects NMFS' emphasis on stewardship of our living marine resources. A sustainable fishery is one in which the rate of fishing mortality does not jeopardize the capacity of the stock to produce the maximum sustainable yield on a continuing basis. This initiative will increase NMFS' capability to implement the cross-cutting theme of environmental stewardship and assessment through decreasing scientific uncertainty associated with resource conservation decision-making and reducing conflicts between competing user groups for fishery resources. By building and maintaining sustainable fisheries, we ensure that fish stocks are available for commercial, recreational and subsistence uses, thereby increasing the long-term economic and social benefits to the Nation. This will require NMFS to address the serious problem of obtaining adequate information on the condition of fishery resources, a problem which challenges the Regional Fishery Management Councils', the agency's, and the Secretary's capabilities to make equitable and sound regulatory decisions for the 39 current FMPs. An improved understanding of the physical and biological processes that control ecosystem dynamics is required in order to assess the factors that influence fish populations and the functions and relationships of habitat to living marine resources. This goal also includes the need to achieve adequate compliance with increasingly complex regulatory regimes and ever increasing competition. Finally, NMFS provides uniquely governmental forms of research and assistance to fishery or seafood related industries to maximize the potential benefits from these resources, and to address the economic and social impacts associated with resource disasters. NMFS will continue to foster technology developments for improving gear selectivity, for aquaculture enhancement and commercial production purposes and for national and international agreements to support conservation goals.

Recover Protected Species Part of NMFS stewardship responsibilities is to ensure that our nation's living marine resources will be protected and enhanced for future generations. Protected species under NMFS jurisdiction include all cetaceans (whales, dolphins, porpoises), pinnipeds (seals and sea lions), and sea turtles, in addition to all marine fish species currently listed as threatened or endangered under the ESA. NMFS provides effective leadership to conserve and recover marine species protected by statute or international treaty through conservation programs that are based on sound scientific research and decisionmaking. NMFS also provides for non-consumptive uses of protected resources which are compatible with their long-term conservation. NMFS is focusing on implementing conservation and recovery plans developed in cooperation with federal, tribal, state and local partners. This will require NMFS to strengthen its capabilities to identify species in need of protection, the barriers to the species recovery and actions to mitigate or avoid detrimental interactions between marine and anadromous species, and human activities.

Healthy Living Marine Resource Habitat All living marine resources are vulnerable to habitat degradation, which can threaten the biodiversity on which they depend. These habitats are at risk from human activities which degrade or destroy habitat quality and quantity. NMFS recognizes that wise protection of living marine resources habitat is essential to the recovery and long-term health of living marine resources, especially those of importance to U.S. commercial and recreational fishermen, and for maintaining biological diversity and the associated economic productivity of the Nation's coasts. Under this objective, NMFS will increase protection for essential fish habitat through collaborative assessment, research and management actions, and expanded participation in ecosystem and watershed management programs. In addition NMFS will expand coastal habitat restoration actions, broaden the types of habitats restored and continue to expand its current efforts to increase leverage of Federal project funds.

LANDINGS AND STATUS OF THE STOCKS

NMFS' performance in meeting its goal to improve the health of our fisheries will be judged by the public by the level of commercial and recreational fishery landings and the status of individual fisheries. Members of the Committee should be advised that while landings data are important, landings do not necessarily reflect the health of a fishery stock. The better measure to assess the performance of NMFS is the status of individual fish stocks, (e.g., the number of stocks assessed, the number whose "unknown" status is resolved, the number of stocks moved from the "overfished" to the "fully utilized" list, the number of fisheries with access control). Therefore, the key benchmarks for rating our performance will be how fishery landings and stocks improve from their current status. These performance measures can be tracked by the information provided in the NMFS publications, "Fisheries of the U.S., " and "Our Living Oceans," including the "Our Living Oceans Economic Report." (attached). These publications, which provide statistical compilations of U.S. landings, the status of fishery stocks and stock complexes, and the economic status of U.S. fisheries, are useful resources to monitor NMFS progress.

In 1996 commercial landings in the U.S. by U.S. fishermen were 9.6 billion pounds with an ex-vessel value of $3.5 billion. This places the U.S. as the world's fifth largest harvester with five percent of the total catch. In addition, U.S. consumers spent an estimated $41 billion for fisheries products in 1996, resulting in the commercial marine fishing industry contributing $21 billion (in value added) to the U.S. Gross National Product. To put these contributions into perspective, it has been estimated that if all marine fish stocks were being harvested at their maximum sustainable yield, the fishing industry has the potential of contributing an additional $4.0 billion a year to the Nation's GNP. In addition, the recreational finfish catch is estimated at 314 million fish taken by 8 million fishermen on an estimated 64 million fishing trips. The recreational industry is estimated to contribute $5 to 7 billion to the U.S. economy annually. Obviously, the fishing industry makes very significant contributions to the U.S. economy and it is clear that improved domestic fisheries production should be a national priority.

From the biological perspective our analysis shows that most marine species are under stress from overexploitation or habitat degradation, or both. The utilization status of 157 of the 201 stock groups that are under the purview of NMFS is currently known. Of the 157 stocks, 36 percent are overutilized, while 46 percent are below levels that would produce MSY (the utilization classification is based on the current level of abundance relative to the level which would produce the maximum sustainable yield). Fortunately we are in the process of reversing this trend. The graph attached to this testimony illustrates that the number of fish stocks defined as overutilized is no longer increasing, but has finally stabilized and is actually showing some signs of decreasing. This is a clear indication that the painful process of rebuilding our nations fishery resources has begun, but it must be recognized that even with this positive trend it will take time to fully recover all of these stocks.

Currently, we find a situation in which more and more vessels are racing to catch fewer and fewer fish. This trend makes fishing more hazardous, allocation decisions more contentious, and by-catch problems greater. There is probably no better an example of this current situation in the U.S. than the Atlantic bluefin tuna fishery. It is international in scope. It is an open-access fishery, with the exception being the purse seine category. The fish are sought from Maine to Texas by commercial and recreational fishermen who use a variety of gear. The fish are also caught incidentally on gear used to catch other fish, and, at least some of the gear used to target bluefin have a by-catch of other fish, sea birds, marine mammals, and sea turtles (all of which are listed as threatened or endangered species). There is a quota of about 1350 metric tons in the U.S., all of which is dedicated to scientific monitoring purposes. There are about 10,000 commercial vessels and another 15,000 recreational vessels permitted to take this quota, and they have the ability to do so in a matter of a few weeks or days. However, regulations attempt to distribute the allowable catch among all these fishermen as temporally and spatially as possible. These regulations have become the focus of a growing public debate over their adequacy, and an increasing number of legal challenges.

While on the subject of Atlantic bluefin tuna, the Committee has asked that we review the status of the stocks for Atlantic highly migratory species (HMS). The stock of bluefin tuna in the Western Atlantic is well below the biomass associated with the maximum sustainable yield. We also find that Atlantic blue and white marlin, and the large coastal shark assemblage are overexploited. Current catches of north Atlantic swordfish are not sustainable, and the stocks for Atlantic bigeye tuna, albacore tuna and yellowfin tuna, as well as the small coastal shark and pelagic shark assemblages, are considered to be fully exploited. Only the western Atlantic stocks of skipjack are not fully utilized. All these stocks are being addressed by a fishery management plan currently under development.

If history foretells the future, one might conclude that U.S. fisheries are on a downward spiral rapidly approaching the bottom of the well. However, I believe that recent advances in our knowledge of the resources and the requirement for sustainability have put us on the path to meeting our objective to rebuild our fishery resources. These efforts have been greatly enhanced by the recent amendments to Magnuson-Stevens Fishery Conservation and Management Act (The Act), which provides the tools and authority to successfully meet our mandate. The Act begins by Congress finding that

> "(2) certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices

> and controls, or (c) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels."

Congress further finds that

"(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources."

The Act reflects the U.S. commitment to the world to apply the same principles for achieving sustainable marine fisheries to its own fishermen as it has espoused in several recently adopted international instruments. All participating nations joined the call for new international agreements at the 1992 Earth Summit in Rio de Janeiro. Several new regional agreements have been negotiated. But, more importantly , by 1995 two new global agreements were reached. The United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, and the FAO Agreement to promote compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), are designed to clarify and expand the rights and duties of states whose vessels fish on the high seas. The UN Fish Stocks Agreement calls upon all countries to adopt the precautionary approach to fisheries management, both inside and outside the 200-mile limit. This Agreement's provisions will enter into force once ratified by at least 30 countries. The compliance agreement will also enter into force once ratified by at least 25 countries. The United States has ratified both agreements, and has completed the development of an implementation plan for the Code of Conduct.

It seems worth spending a few moments to address the precautionary approach a bit further. The idea first surfaced in the 1980s in the context of marine pollution. Its application is broadened through the Rio Declaration, which provides that lack of full scientific certainty is not a reason for postponing measures to protect the environment. The past 10 years have seen increasing efforts, especially internationally, to apply the approach to fisheries. In 1995, a Technical Consultation on the Precautionary Approach to Capture Fisheries was convened by Sweden and FAO. This Technical consultation recognized that "all fishing activites have environmental impacts and it is not appropriate to assume that these are negligible until proved otherwise;" (FAO 1995). Most recently, the Straddling Stock Agreement calls for application of the precautionary approach to conservation of straddling stocks and highly migratory species. It requires that states be more cautious when information is uncertain, unreliable, or inadequate, and provides that an absence of adequate scientific data not be used as a reason for postponing or not taking conservation and management measures.

Uncertainty is a reality in fisheries management. The greater the uncertainty, the more conservative the management must be. We rely upon scientifically based information to reduce this uncertainty, and thus, to allow for greater harvests than would otherwise occur within the precautionary approach. The need for accurate, timely, and precise scientific information has never been greater. As fish stocks have dwindled and the capacity to harvest has increased, the scientific basis for many decisions that restrict harvests has been subjected to an increasing number of challenges. We are fortunate that, to date, most of those challenges have been resolved in a manner consistent with the precautionary approach. For example, a recent decision by the U.S. District Court for the District of Maine in Associated Fisheries of Maine v. Daley upheld the federal government's basis for implementation of Amendment 7 to the New England Fishery Management Council's Northeast Multispecies Fishery Management Plan. In the final order, Judge Hornby said, "[i]t is appropriate, therefore, for the Secretary to be conservative in dealing with the issue of conservation and, in the face of uncertainty, to take the more strenuous measures--even though they may unfortunately have a short term drastic negative effect on the fishing industry."

This example brings us back to one of the major responsibilities of NMFS -- high quality science. NMFS is responsible for ensuring that management decisions are based on the highest quality scientific information available. Therefore, we strive to ensure that all of the agency's information is comprehensive, objective, credible, and effectively communicated. This means taking an approach which includes studying species' responses to environmental changes, exploitation, and other human activities that affect them and their habitat. Information about the complex social, political, and economic issues involved in living marine resource management also forms a crucial part of the management equation. This information is required not just for current management decisions, but also to conserve resources and anticipate future trends, assure future use opportunities, and assess the success of our management efforts.

NMFS has shifted its scientific focus along with the changing needs of the agency. However, NMFS recognizes that it does not have authority or resources to accomplish all of the goals and objectives described in the *Strategic Plan for NOAA Fisheries*, nor those imposed by the SFA. Hence, NMFS works in cooperation with other federal and state agencies, the academic and environmental communities, Native American tribes, Pacific Islanders, international entities, NGO's, and the private sector, including the fishing industry, to ensure that Administration and Congressional decision-makers have access to the most recent and comprehensive data available. We are active in sharing research vessels, developing and following agreed research protocols, adopting common fisheries information systems, and sharing the data whenever possible. However, we will require more information from research vessels and chartered vessels in the future in an effort, for example, to assess the amounts of young fish in the population and the effects of the environment on them. Added emphasis will be directed to obtaining more complete information about fishery landings, and the necessary systems to allow the sharing of catch statistics among the users of that data. NMFS will continue to rely on its scientists to provide the compass for direction in our policy setting and decision-making.

With a sound foundation in scientific information, NMFS will be better able to meet the challenges of fisheries management in the Act. The Act actually contains many provisions to address the Congress' findings. While not explicitly stated in the Act, the precautionary approach forms the core of the solution to reverse the current state of U.S. fisheries. The Act now requires the optimum yield for each fishery be set equal to or less than maximum sustainable yield. Overfishing is now statutorily defined, and overfished fisheries must be identified and management measures put in place to rebuild those fisheries within as short a time as possible but no more than 10 years (unless the species' biology, other environmental factors, or an international agreement dictate otherwise). Proposed Guidelines that expand on the Act's language have now been published by the National Marine Fisheries and the first report to Congress listing currently overfished fisheries is nearing completion. This list will focus immediately the Regional Fishery Management Council's (Council) and Agency's efforts to develop rebuilding programs for the country's most depressed stocks.

The precautionary approach is further applied to the new requirements concerning allowable fishing gear. A list of gear currently used legally in each Council's area of jurisdiction will be published for review and comment in the very near future. Once finalized, this list will prohibit the use of any other without specific regulatory authorization. In other words, we are moving from an era when any gear could be used unless specifically prohibited to a time when all gear will be prohibited unless specifically allowed.

Finally, the requirements concerning by-catch follow the precautionary approach. By-catch is to be avoided to the extent practicable. However, when it can't be avoided, the mortality of such bycatch is to be minimized. The Act clearly recognizes that sustainability of fisheries depends critically on the sustainability of fish.

Catch reductions associated with rebuilding fish stocks will have a severe economic effect on some fishermen. Financial assistance in many forms will be needed during these periods of rebuilding. Congress recognized this need and built a framework for providing the needed relief through a fishing capacity reduction program. The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. Only when our capacity to harvest fish more closely matches the fish's capacity to replace that harvest will we have achieved sustainable fisheries.

The Act conveys a sense of urgency on correcting the depressed state of our fisheries. It requires that amendments to all of our 39 national fishery management plans that address all of the new national standards and all other new requirements be submitted to the Secretary by October 11, 1998. Additional interim deadlines are set by the Act to insure that the new approach to fisheries management is implemented as soon as possible.

The Administration shares this sense of urgency. As the head of the agency responsible for implementing the Act, I have assigned the implementation of this Act the highest priority for at least the next two years. I have committed fiscal and human resources, reprogrammed our activities within the flexibility allowed by law, and attempted to make the implementation as transparent as possible to everyone interested in what we are doing. I am pleased to report that we have made substantial progress in accomplishing our objective of satisfying all of the Congressional mandates. We have received positive feedback on our progress and on the access to information that we have provided. Your support and responsiveness to our efforts has helped make this possible.

I am optimistic that the stage has been set for converting this country's marine stocks into healthy, productive and sustained fisheries in the very near future. The fundamental changes in our approach to management have begun, and we have actually already seen some successes. Some of our more important successes include:

Striped Bass: In response to declines in striped bass stocks in the late 1970's, the National Marine Fisheries Service (NMFS) has worked closely with the Atlantic States Marine Fisheries Commission (ASMFC) under one of the most successful management programs in the nation, to rebuild the stocks. The ASMFC prepared a coastwide management plan for striped bass along the Atlantic Coast, in 1981. Congress passed legislation, the *Atlantic Striped Bass Conservation Act (ASBCA)*, in 1984, enabling Federal imposition of a moratorium on striped bass fishing in states when they fail to comply with the ASMFC Fishery Management Plan. Coastal states have the principal management jurisdiction over Atlantic striped bass, through the ASMFC plan. NMFS has supported important research and monitoring programs on striped bass, and promulgated regulations prohibiting the harvest of striped bass in the EEZ to ensure the effectiveness of state regulations.

The ASBCA has resulted in the dramatic recovery of striped bass, with the coastwide stock declared "restored" in January, 1995. Restrictions on both commercial and recreational harvests have been lessened and landings have increased in both sectors. In 1996, commercial landings totaled 5.4 million pounds, a 42 percent increase over 1995 landings but 63 percent below the historical high of 14.7 million pounds taken in 1973. Recreational catch of striped bass, in 1996, is estimated at 14 million fish, of which 12.7 million fish were released alive. Recreational harvest (landed fish) in 1996 is estimated about 1.3 million fish, totaling 14.7 million pounds.

Gray whales: Critically depleted by commercial harvest and other human activities, gray whales were among the large whales that were listed as endangered when the Endangered Species Act was initially passed. The eastern Pacific stock, which inhabits waters off the coast of the United States, has responded to the protections included in NMFS' implementation of the ESA and MMPA. Due to the dramatic growth of the population since the early 1970's, NMFS was able to determine that the Eastern Pacific stock had recovered to the point that it no longer warranted protection under the ESA. In fact, NMFS has determined that Eastern Pacific gray whales have achieved their Optimum Sustainable Population levels. In January, 1993, NMFS recommended that the U.S. Fish and Wildlife Service remove Eastern Pacific gray whales from the endangered list. NMFS continues to pursue international efforts to achieve the same recovery for the Western Pacific stock of gray whales.

Embargo of bluefin tuna imports: The United States has prohibited all imports of Atlantic bluefin tuna caught by vessels from Honduras and Belize (and Panama effective January 1, 1998) because the fishing activities of the three countries were undermining international efforts to manage and conserve the species. This is the first time that the United States has implemented internationally agreed sanctions against countries found to violate conservation rules of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS expects this action, in concert with other conservation actions, to be part of the foundation for the recovery of this stock.

King and Spanish mackerel: Significant declines in abundance and overfishing in the late 1970s and early 1980s presented a critical need to manage king and Spanish mackerel and other coastal pelagic species. In response to rapidly rising recreational and commercial catches of Gulf group king mackerel that soared to an estimated 13.7 and 6.1 million pounds, respectively, Amendment 1 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic was implemented in 1985. Catches by 1987 were reduced to 2.0 and 0.9 million pounds respectively. As a result of a 12-year rebuilding plan under this fishery, overfished groups of king and Spanish mackerel have showed continual improvement. The 1993 Stock Assessment Report specified that the Atlantic group Spanish mackerel was no longer considered overfished and the Gulf group has closely approached this status.

Alaska groundfish: The Alaska region dominates in the tonnage of fisheries resources that could be obtained in the long term for the United States. Until the M-SFCMA implementation in 1977, Alaska's groundfish fisheries, except for Pacific halibut, were dominated by foreign fishermen. Within a few years under new management regime, the U.S. fishery largely replace the foreign fishing fleet. Despite the dramatic development of this vast resource by domestic fishermen, effective management in the region has allowed overall stock levels to remain in high abundance and in excellent condition.

Although we have had successes and we can expect more in the future, our future role in expanding our management efforts and, in turn, the success we achieve will in large measure be dictated by the availability of resources and their effective use.

CONCLUSION

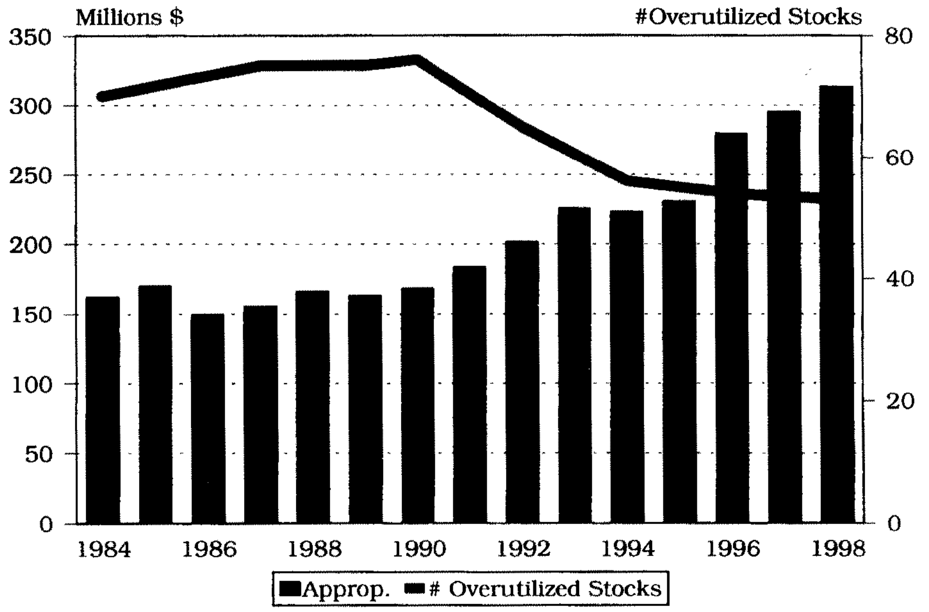
Mr. Chairman and Members of the Committee, I appreciate the opportunity to present this review of the work being performed by our agency. I believe that NMFS has recognized the need to reevaluate its responsibility for managing the Nation's fisheries in light of the depleted status of so many fish stock and has addressed this need in the goals of the NMFS Strategic Plan, a Plan which embraces the concept of the precautionary approach. NMFS is taking the necessary actions towards these goals to ensure we are successful in fulfilling the expectations set by the Plan. However, we are doing this in an atmosphere of government downsizing, that is, trying to do much more with significantly fewer personnel. We support the move to streamline government operations and have reduced the NMFS workforce by 11 percent since 1994. At the same time the Agency has been given significant additional responsibilities with the reauthorization and amendment of the MMPA and the Magnuson-Stevens Act.

I am confident that with the new tools provided by Congress, and an improved conservation approach, NMFS management will allow this nation to realize the forecasted (long-term) $2.9 billion annual increase in net economic benefits to be derived from the development of sustainable fishery resources. This forecasted increase could have an annual impact on the Gross Domestic Product of $8 billion and about 300,000 jobs. This would lead to increased tax revenues of about $1 billion from the harvesting sector alone as it becomes profitable; much more if the flow of fisheries profits to other investments is included. In addition, I foresee the following benefits:

* A robust fishing industry
* Less loss of life and property during commercial fishing by eliminating the dangerous and wasteful "race for the fish"
* Opportunities for many more a Americans to enjoy the pleasures of sport fishing
* Maintenance of coastal ecosystem biodiversity and long-term productivity for sustained use
* A steady supply of high-quality domestic seafood
* An improved investment climate, with fewer market gluts, to encourage additional economic growth of the fishing industry and secure more favorable trade positions in the world market
* Development of industries to utilize previously discarded species and fishery waste
* Restoration, as required by law, of protected marine species, which have immeasurable value to the American people, and which will also strengthen our economy by reducing ESA restrictions on fishing and other industries

Thank you Mr. Chairman and I am prepared to respond to questions from members of the Committee.

Trends in NMFS Appropriations and # Overutilized Stocks



New Fish Kill Found Miles From Pocomoke

Md. Officials Close Section of Bay Tributary

By Todd Shields
and Eugene L. Meyer
Washington Post Staff Writers

Maryland officials closed a three-mile stretch of a Chesapeake Bay tributary in Somerset County yesterday after finding thousands of fish with *Pfiesteria*-like lesions, the first indication that the toxic microbe may be attacking outside the Pocomoke River.

Department of Natural Resources Secretary John R. Griffin said he expects "more fish kills like this," which bore the marks of the microorganism *Pfiesteria piscicida*, blamed for two fish kills last month in the Pocomoke River.

The latest attack occurred along Kings Creek, a branch of the Manokin River, which flows into the Chesapeake Bay. The creek is about 15 miles north of Shelltown, the Pocomoke River community that until now has been at the center of the *Pfiesteria*-related fish kills in Maryland.

State environmental investigators said they found as many as 6,000 stricken menhaden, a small silvery fish primarily used as bait, thrashing near the surface of Kings Creek. It was at least the second day that fish were stricken in the creek, said Brian Parker, a fisherman who reported the kill yesterday to a new Department of Natural Resources hot line activated Tuesday to take calls about sickened and dead fish throughout the Chesapeake Bay.

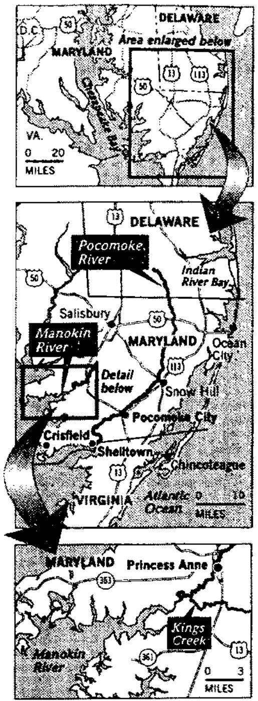
State biologists at the scene said the fish's lesions and confused, lethargic swimming pointed to a *Pfiesteria* attack.

"Something's triggered a *Pfiesteria* bloom that is now eating the menhaden," said John Steinfort, a biologist for the Maryland Department of the Environment at the site.

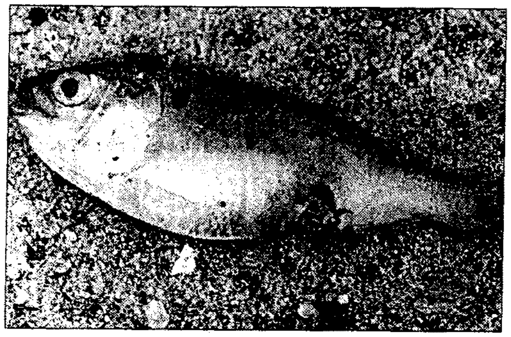
An environmentalist who has been watching the Pocomoke River and local rivers for signs of new fish kills said the latest occurrence heightens concerns about the microbe.

"This shows there's good reason

See FISH KILL, A24, Col. 1



THE WASHINGTON POST



Thousands of stricken menhaden were found in Kings Creek, investigators said.

Scientists have said the Pocomoke is uniquely suited to turn the toxin deadly in the river's lower reaches, where the deep, narrow tributary suddenly becomes wide and shallow, causing large amounts of algae to bloom and schools of fish to feed on them.

The problems with fish on the Pocomoke surfaced last fall, when watermen first reported the fish with lesions. At the same time, several people who came into contact with Pocomoke waters reported rashes, breathing difficulties and memory loss. State health officials ultimately attributed health problems of 13 individuals to *Pfiesteria*.

Two fish kills, involving as many as 30,000 fish on the lower Pocomoke, led Glendening on Aug. 29 to close indefinitely a seven-mile stretch of the river to all recreational and commercial use. The Pocomoke fatalities have been mostly menhaden.

Until yesterday, state officials continued to maintain the problem was limited to the Pocomoke and almost exclusively to menhaden. But public fears that the microbe may be more widespread has had a chilling impact throughout the bay on fishing charters, commercial fishermen, fish wholesalers, restaurants and even some motels that depend on fishing parties.

Parker, the fisherman who alerted authorities to the kill, said the sight of sick fish on Kings Creek was unsettling.

"I don't even want to touch them now," Parker said. "They said it was the Pocomoke, so it was no big deal, [but] this makes different areas around here suspect."

Griffin also cited Burkholder's reassurance that the larger fish kills of North Carolina are unlikely to occur in the area because of the bay's greater flushing activity, its cooler temperatures and greater efforts to reduce nutrient runoffs.

State biologists planned to check Kings Creek and the Manokin River beginning at dawn today for more signs of affected fish.

If confirmed by laboratory analysis of water samples and victim fish, yesterday's kill would mark the first time *Pfiesteria* has been known to blossom in toxic levels in natural waters of the bay system outside the Pocomoke.

The microbe has been discovered in its normally benign state at least four times in bay tributaries in recent years. But for reasons not fully understood, it at times changes form, becomes toxic and attacks fish. That happened twice last month on the Pocomoke, where *Pfiesteria* blossomed in toxic levels, killing 20,000 to 30,000 fish. Officials closed a section of that river after doctors found *Pfiesteria* had caused brain impairment and other health problems in people who had been in or near the river.

Officials have warned against contact with water where fish with lesions are found dead or dying. Yesterday, investigators on Kings Creek wore two pairs of rubber gloves as they stalked the banks trying to net menhaden. Later, workers preparing to trawl the river wore stout boots, rain suits, goggles and respirators for protection against the microbe's toxins.

Environmentalists have cited manure from the Eastern Shore's large poultry industry as a possible cause of the Pocomoke *Pfiesteria* outbreaks. The waste, which washes into waterways and over-enriches them with nitrogen and phosphorus, promotes the microbe's growth, they contend. Farmers have said there is no firm evidence linking *Pfiesteria* outbreaks to chicken manure

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to believe it's more extensive than we first anticipated," said John Goodall, river monitor for the Chesapeake Bay Foundation, a private nonprofit environmental advocacy group. "It's not just the Pocomoke. It's here in the Manokin. It could be in other areas."

Gov. Parris N. Glendening (D) said he was very disturbed by the news because this is the first time fish with lesions have been found outside the Pocomoke River and Pocomoke Sound.

"This is a different watershed. It therefore suggests that this is a broader-based problem" than officials had hoped, the governor said.

Glendening also said he wanted to emphasize that "we have no evidence whatsoever of any problem in the bay or any of the major tributaries."

"The bay is safe. Seafood is safe," he said. "But in smaller creeks, it does appear we have an extended problem."

Although state officials previously had discounted anglers' reports of sick fish around the bay as unrelated to the Pocomoke problem, Griffin said, the department is carefully considering every call to the hot line. His office sent one of four teams of biologists to Kings Creek to investigate Parker's call, and a police helicopter and boats were dispatched to look for signs of a large-scale kill on the waterway.

"We are taking fish and water quality samples," Griffin said from his Annapolis office. "The fish all seem to have the *Pfiesteria*-like lesions on them."

In closing the creek, Griffin said, the state was following the general advice of JoAnn Burkholder, the North Carolina scientist who first identified *Pfiesteria* eight years ago after it killed millions of fish in that state's coastal waters

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U.S. House of Representatives
Committee on Resources

Washington, DC 20515

September 9, 1997

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MEMORANDUM

TO: Members, Subcommittee on Fisheries Conservation, Wildlife and Oceans

FROM: Subcommittee Staff

RE: Oversight Hearing on the Review of the Management of Our Nation's Fisheries By the National Marine Fisheries Service

At 10:00 a.m. on Thursday, September 11, 1997, in Room 1324 Longworth House Office Building, the Subcommittee on Fisheries Conservation, Wildlife and Oceans will hold an oversight hearing. The purpose of the hearing will be to obtain an update on the management of our Nation's fisheries and the agency that oversees these resources, the National Marine Fisheries Service, Department of Commerce. Mr. Rolland A. Schmitten, Assistant Administrator for Fisheries, National Marine Fisheries Service, has been invited to testify.

BACKGROUND

The National Marine Fisheries Service (NMFS) was established by Reorganization Plan #4 of 1970, which transferred the duties of the Bureau of Commercial Fisheries from the U.S. Fish and Wildlife Service to the National Oceanic and Atmospheric Administration in the Department of Commerce. NMFS is responsible for the Nation's anadromous and coastal fish. Other responsibilities include management of highly migratory species under the Atlantic Tunas Convention Act (16 U.S.C. 971) and all fisheries species within the exclusive economic zone of the United States under the Magnuson-Stevens Act (16 U.S.C. 1801-1883)

HIGHLY MIGRATORY SPECIES

In 1990, the House Merchant Marine and Fisheries Committee agreed to place the responsibility for highly migratory species (HMS) management within NMFS. HMS were being managed by a number of Regional Councils and confusion prevailed. These species, which are international in range, required a coherent management policy that could only be found under management by one entity -- the Secretary of Commerce. The Secretary of Commerce has had responsibility for drafting a Fishery Management Plan for HMS for over six years. Such a plan has yet to be drafted. The advisory panels instituted under the

http://www.house.gov/resources/

Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801-1883) are being formed to assist in the development of a Secretarial plan on HMS.

* **Atlantic Bluefin Tuna:**

This valuable highly migratory species was once considered a trash fish by many commercial fishermen. Purse seiners roamed the East Coast and harvested a large volume of these fish and sold them for cat food. There has been a large historic recreational fishery for Atlantic bluefin tuna (ABT). Anglers have enjoyed catching these fish for generations. In the late 1970's, the Japanese recognized the giant ABT's quality for sushi and sashimi. A race into the fishery began, as differing gear types all competed to supply the Japanese market. The United States was one of the founding participants in a treaty to manage these and other international fishery resources.

ABT has been managed for decades through an international treaty, the International Convention for the Conservation of Atlantic Tunas (ICCAT). At the treaty convention, held each Fall in Spain, participating nations negotiate quotas for ABT, other tunas, and billfish like marlin and swordfish. Once ICCAT has agreed to an overall western Atlantic quota for ABT, it must divvy it up among the four nations that share this quota: Japan, Canada, Bermuda and the U.S. NMFS shares responsibility with the Department of State in negotiating on behalf of the United States. NMFS then divides the U.S. quota among the various user groups. Since ICCAT's management measures have been instituted, according to the Standing Committee on Research and Statistics, an ICCAT-sponsored scientific body, the spawning stock for ABT in the western Atlantic has declined to 13 percent of its mid-1970's level. This precipitous decline has caused suspicion among domestic fishermen who have reduced their quota share in order to "set a good conservation example" while other nations are not taking the necessary conservation measures. It has been some fishermen's contention that while the U.S. cuts back on their quota, nations in the eastern Atlantic and Mediterranean have disregarded and misreported the amount of ABT they have taken. For this reason, in 1996, the focus at ICCAT was on compliance measures which all nations must observe or face tough sanctions.

Because it is an international fishery, it is difficult to pin the drastic decline of ABT on any one entity. Tough economic sanctions must be adhered to if compliance is to occur among all ICCAT nations.

* **Sharks:**

These species are generally recognized as ones that grow slowly in size, produce few offspring, and live for many years. This means that, once depleted, they are slower to recover than other fishes, even if all fishing for them were to cease. In the 1980's, NMFS played the dominant role in developing the shark fishery. NMFS conducted seminars on shark marketing, declared the fishery "underutilized", and there is some anecdotal evidence that U.S. fishermen were given the names of overseas shark fin dealers. With NMFS' encouragement, fishermen turned to shark fishing when swordfish and scallop stocks became depleted.

In 1990, NMFS started to show concern for the shark fishery and began to conduct stock assessments. By 1993, NMFS had put together a Fishery Management Plan on sharks. By this time, the shark species were so depleted that drastic measures were needed, causing economic disruption for both the commercial and recreational sectors. Proposed rules published in February 1997 called for a 50 percent harvest reduction and a complete ban on the harvest of five species.

* Pacific Northwest Salmon:

Seventy percent of the 471 miles from the mouth of the Columbia River to Lewiston (Idaho) / Clarkston (Washington) on the Snake River have been converted from free-flowing rivers into slack-water reservoirs after the completion of eight hydroelectric dams. Over the last decade, salmon have disappeared from about 40 percent of their historical breeding ranges in Washington, Oregon, Idaho, and California. Most runs that appear plentiful today are largely composed of fish produced in hatcheries. Recreational and commercial fishing for several salmon species has been restricted or even prohibited from the coastal waters of the region to the headwaters of many streams, and tribal fishing has also been reduced.

Due to the decline in salmon populations, NMFS listed Snake River sockeye as endangered under the Endangered Species Act (ESA) in 1991. Snake River spring/summer chinook and fall chinook were listed as threatened in 1992 and reclassified as endangered in 1994 because of the low number of adults returning to spawn. Once a species is listed, the ESA requires a recovery plan to be established and implemented. The development and implementation of this recovery plan has come under intense scrutiny.

The Subcommittee has held two hearings on NMFS management of Columbia River Basin salmon populations. The first hearing was held on July 24, 1997, and the second hearing was held in Boise, Idaho on August 15, 1997. The purpose of these two hearings was to hear from relevant stakeholders on their experiences with NMFS' management of the Columbia River Basin salmon populations and to have NMFS respond to the concerns raised by the stakeholders.

Witnesses at both hearings commented on NMFS' ongoing resistance to initiatives developed by the relevant states and the Columbia River treaty tribes. In addition, witnesses expressed frustration at the difficulties of achieving interagency cooperation. Witnesses also described to the Subcommittee a NMFS unilateral decision-making process that has had disastrous economic impacts on regional stakeholders, yet has not restored the region's anadromous fish stocks. It appears that millions of dollars of taxpayer money have been spent on recovery efforts, the views of the affected stakeholders have not been given sufficient attention, and the population of wild salmon continues to decline.

THE UNITED STATES ATLANTIC MACKEREL FISHERY

Atlantic mackerel is a pelagic, schooling species distributed between Labrador, Canada, and North Carolina, with extensive migration patterns. While the National Marine Fisheries Service (NMFS) has determined that there are two separate stocks, genetic differences between the stocks have not been established and they are managed as a single biological unit.

No formal stock assessment of Atlantic mackerel has been conducted since 1991. The 1991 Stock Assessment Review concluded that the stock has experienced several years of strong recruitment and low fishing mortality rates resulting in a substantial increase in the point estimates of the biomass. The NMFS believes that the overall spawning stock biomass is currently around 2.1 million metric tons. The Mid-Atlantic Fishery Management Council has established the Allowable Biological Catch at 383,000 metric tons for 1997, based on the current projection of spawning stock biomass and the low projections of domestic fishing mortality rates. The Mid-Atlantic Council and NMFS both recognize that this quota level is likely to drop sharply as fishing activity on the stocks increase. The Mid-Atlantic Council's Statistical and Scientific Committee has adopted a minimum spawning stock biomass threshold level for Atlantic mackerel at 900,000 metric tons. This equates to a long-term maximum sustainable yield for the fishery of roughly 150,000 metric tons annually.

THE UNITED STATES HERRING FISHERY

Atlantic herring are distributed along the Atlantic coast from North Carolina to the Canadian maritime provinces. Three separate, more or less distinct spawning populations have been recognized comprising (1) the Gulf of Maine, (2) off the southwest coast of Nova Scotia, and (3) on Georges Bank and Nantucket Shoals. Although a fair amount of research has been done over the years, there are still great uncertainties as to the locations and relationships between and among the distinct spawning populations. These questions are critical to the successful management of the herring resource, both in Canada and the United States.

Herring is a plankton feeder, preying on tiny marine crustaceans and larval fish. As an important prey item for many other animals, they transfer energy from primary and secondary production to higher levels of the food web. They are preyed upon by many other species of fish, especially cod, pollock, haddock, silver hake, striped bass, mackerel, tuna, salmon, and dogfish, as well as short-finned squid.

Herring has long been an important fishery along the U.S. Atlantic coast. In Maine, which accounts for 90 percent of domestic landings, herring has supported the traditional sardine industry. Canned herring is sold around the world and, last year alone, the sardine industry generated about $60 million in wholesale revenues and employed more than 1,000 coastal residents in harvesting and processing businesses. Herring is also an important source of bait for lobstermen and tuna fishermen.

Historically, foreign fishermen harvested the vast majority of herring before the enactment of the 200-mile limit. In fact, foreign overfishing of herring on Georges Bank was one of the key reasons for extending management jurisdiction out to 200 miles. The Georges Bank herring fishery began in 1961 with the U.S.S.R. taking almost 70,000 tons. Fishing pressure grew with the addition of distant-water factory trawlers and in 1968, catches peaked at 374,000 metric tons. Although the scientific advice in the late 1960's and the early 1970's was for reduced catches, harvest levels remained high and the resource was quickly overfished. In 1978, the resource was so overfished that the scientific advice was a zero quota in the Gulf of Maine and only 8,000 metric tons on Georges Bank.

ISSUES

- What is the state of our Nation's fisheries?
- In the past five years, how many additional fisheries have become overfished and how many Fishery Management Plans have been written?
- How much will NMFS spend this fiscal year on collecting population data on our Nation's various fish species? Is that enough of a financial commitment?
- How often are stock assessments done for each fishery? What progress has NMFS made toward implementing cooperative research efforts with the fishing industry?
- What plans are being made to replace the MILLER FREEMAN when it goes into drydock in September 1998? Will surveys, specifically on the West Coast and in the Gulf of Alaska, be affected in any way?
- If Congress wanted to know how many weakfish there were in the Atlantic Ocean, how would NMFS determine that population figure?
- Are the eight Regional Fishery Management Councils working effectively to properly manage and conserve those species under their jurisdiction?
- How does the agency respond to the criticism that it only reacts to a situation within a fishery when there is a crisis and, because of this inattention, drastic measures must be implemented?

Magnuson-Stevens Act Implementation Activity List

C in Activity number is Council Activity
N in Activity number is NMFS Activity

September 9 1997

C-01.01 DEFINITIONS: Amend FMPs and FMP regulations for consistency with SFA Section 102 definitions [MSFCMA Sec. 3]
New England Fishery Management Council

C-01.02 FISHERY MANAGEMENT PLANS: Required provisions in FMPs [SFA Sec. 108(a) pp. 40-42; MSFCMA Sec. 303(a)]
New England Fishery Management Council

C-01.03 COUNCIL SOPPs: Revise to reflect SFA requirements [SFA Sec. 107; MSFCMA Sec. 302]
New England Fishery Management Council

C-02.01 DEFINITIONS: Amend FMPs and FMP regulations for consistency with SFA Section 102 definitions
Mid-Atlantic Fishery Management Council

C-02.02 FISHERY MANAGEMENT PLANS: Required provisions in FMPs [Sec. 108(a); pp. 40-42]
Mid-Atlantic Fishery Management Council

C-02.03 COUNCIL SOPPs: Revise to reflect SFA requirements
Completed
Mid-Atlantic Fishery Management Council

C-03.01 DEFINITIONS: Amend FMPs and FMP regulations for consistency with SFA Section 102 definitions
South Atlantic Fishery Management Council

C-03.02 FISHERY MANAGEMENT PLANS: Required provisions in FMPs (SFA Sec. 108(a); M-SFCMA Sec. 303)
South Atlantic Fishery Management Council

C-03.03 COUNCIL SOPPs: Revise to reflect SFA requirements
South Atlantic Fishery Management Council

C-04.01 DEFINITIONS: Amend FMPs and FMP regulations for consistency with SFA Section 102 definitions
Gulf of Mexico Fishery Management Council

C-04.02 FISHERY MANAGEMENT PLANS: Required provisions in FMPs [Sec. 108(a); pp. 40-42]
Gulf of Mexico Fishery Management Council

C-04.03 COUNCIL SOPPs: Revise to reflect SFA requirements
Gulf of Mexico Fishery Management Council

C-05.01 DEFINITIONS: Amend FMPs and FMP regulations for consistency with SFA Section 102 definitions
Caribbean Fishery Management Council

C-05.02 FISHERY MANAGEMENT PLANS: Required provisions in FMPs [Sec. 108(a); pp. 40-42]
Caribbean Fishery Management Council

C-05.03 COUNCIL SOPPs: Revise to reflect SFA requirements
Caribbean Fishery Management Council

C-06.01 DEFINITIONS: Amend FMPs and FMP regulations for consistency with SFA Section 102 definitions
Pacific Fishery Management Council

C-06.02 FISHERY MANAGEMENT PLANS: Required provisions in FMPs [Sec. 108(a); pp.

	40-42] Pacific Fishery Management Council
C-06.03	COUNCIL SOPPs: Revise to reflect SFA requirements Pacific Fishery Management Council
C-06.04	SHELLFISH FMP: Prepare an FMP for shellfish fisheries especially Dungeness crabs Pacific Fishery Management Council
C-07.01 Completed	DEFINITIONS: Amend FMPs and FMP regulations for consistency with SFA Section 102 definitions North Pacific Fishery Management Council
C-07.02	FISHERY MANAGEMENT PLANS: Required provisions in FMPs [Sec. 108(a); pp. 40-42] North Pacific Fishery Management Council
C-07.03 Completed	COUNCIL SOPPs: Revise to reflect SFA requirements North Pacific Fishery Management Council
C-07.04	NORTH PACIFIC BYCATCH REDUCTION: Prepare conservation and management measures to lower economic discards [Sec .117(a)(3); p.113] North Pacific Fishery Management Council
C-07.05	RUSSIAN FISHING IN THE BERING SEA: Prepare a report to Congress [Sec. 105(g); p. 27-28] North Pacific Fishery Management Council
C-07.06	NORTH PACIFIC LOAN PROGRAM: Prepare recommendation on uses of fees in the halibut-sablefish fisheries [Sec. 108(g); pp. 53-54] North Pacific Fishery Management Council
C-07.07	NORTH PACIFIC CATCH MEASUREMENT: Prepare management procedures and regulations for measurement of entire catch [Sec. 117(a)(3); p. 115] North Pacific Fishery Management Council
C-07.08	NORTH PACIFIC CATCH MEASUREMENT: Submit a plan to Congress for weighing catch by processors and processing vessels [Sec. 117(a)(3); p. 115] North Pacific Fishery Management Council
C-07.09	NORTH PACIFIC FULL RETENTION AND UTILIZATION OF CATCH: Submit a report to the Secretary on advisability of full catch retention by vessels and full utilization of landings by processors [Sec. 117(a)(3); p. 115-116] North Pacific Fishery Management Council
C-07.10 ●	ALASKA COMMUNITY DEVELOPMENT PROGRAM: Establish western Alaska CDQ programs for all M-SFCMA fisheries [Sec. 111(a)(1); pp. 85-89] North Pacific Fishery Management Council
C-08.01	DEFINITIONS: Amend FMPs and FMP regulations for consistency with SFA Section 102 definitions Western Pacific Fishery Management Council
C-08.02	FISHERY MANAGEMENT PLANS: Required provisions in FMPs [Sec. 108(a); pp. 40-42] Western Pacific Fishery Management Council
C-08.03	COUNCIL SOPPs: Revise to reflect SFA requirements Western Pacific Fishery Management Council
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N-01.02	DEFINITIONS: Review all existing definitions in FMP regulations for inconsistencies with SFA language
N-01.03 Completed	DEFINITIONS: Review all existing definitions in FMP regulations for inconsistencies with SFA language
N-01.04 Completed	DEFINITIONS: Review all existing definitions in FMP regulations for inconsistencies with SFA language
N-01.05 Completed	DEFINITIONS: Review all existing definitions in FMP regulations for inconsistencies with SFA language
N-01.06 Completed	DEFINITIONS: Advise Council Chairmen and Executive Directors of need to review and amend FMPs and FMP regulations for consistency with SFA language
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N-05.03 Completed	PREVENT OVERFISHING AND REBUILD STOCKS: Specify criteria to identify overfishing end overfishing and rebuild stocks [Sec. 108(a)(7); p. 41]; Revise Section 600.310 regulations
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N-06.02 Completed	FISHING COMMUNITIES: National Standard 8: Interpret "sustained participation" [Sec. 106(b); p. 28]:
N-06.03 Completed	FISHING COMMUNITIES: National Standard 8: Interpret "substantially dependent" and "substantially engaged" [Sec. 106(b); p. 28]:
N-07.01 Completed	BYCATCH: National Standard 9: Add National Standard 9 and guidelines to Part 600 subpart E regulations [Sec. 106(b); pp.28-29]
N-08.01 Completed	SAFETY AT SEA: National Standard 10: Add National Standard 10 and related guidelines to regulations at Part 600 Subpart E [SFA Sec. 106(b) pp 28-29;

M-SFCMA Sec. 301(a)(10)]

N-09.01 COUNCIL HANDBOOK: Revise to include new requirements

N-09.02 SOPPs: Letter to Councils and NMFS/HMS Division on need to change SOPPs to
Completed conform with SFA requirements

N-09.03 SPECIAL COUNCIL REQUIREMENTS: Letter from Alaska Regional Administrator
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N-09.04 SPECIAL COUNCIL REQUIREMENTS: Letter from Northwest Regional Administrator
Completed advising Council of special requirements

N-09.05 SPECIAL COUNCIL REQUIREMENTS: Letter from Southwest Regional Administrator
Completed advising Council of special requirements

N-10.01 BYCATCH REDUCTION AGREEMENTS [Sec. 105(b); p. 14) Review existing standards
Completed and measures

N-10.02 BYCATCH REDUCTION AGREEMENTS [Sec. 105(b); p. 14]: Prepare a report to
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N-10.03 BYCATCH/INCIDENTAL HARVEST RESEARCH [Sec. 206; p. 131-134]: Collection of
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N-10.05 BYCATCH/INCIDENTAL HARVEST RESEARCH [Sec. 206]: Establish a bycatch reduction program to develop devices to minimize bycatch mortality and evaluate ecological impacts benefits and costs and practicality of devices

N-10.06 BYCATCH/INCIDENTAL HARVEST RESEARCH [Sec. 208; pp. 140-141]: Study of contributions of bycatch to charitable organizations

N-10.07 BYCATCH/INCIDENTAL HARVEST RESEARCH: North Pacific Bycatch Reduction Incentives [Sec. 117(a)(3); 113-114]

N-11.01 ESSENTIAL FISH HABITAT: Actions by the Secretary and Councils regarding essential fish habitat [Sec. 110(a)(3)]: Promulgate regulations implementing guidelines to assist Councils in the description and identification of essential fish habitat

N-11.02 ESSENTIAL FISH HABITAT: Actions by the Secretary and Councils regarding essential fish habitat [Sec. 110(a)(3)]: Provide Councils with recommendations and information on identification of essential fish habitat including threats and conservation and enhancement measures

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N-15.03 HIGHLY MIGRATORY SPECIES: Availability of records of meetings and other

Completed documents for public inspection [Sec. 107(h)(8)]: Revise HMS process

N-15.04 HIGHLY MIGRATORY SPECIES: Comprehensive management system for Atlantic
pelagic longline fishery [Sec. 109(h); 71-72]

N-15.04 HIGHLY MIGRATORY SPECIES: Comprehensive management system for Atlantic
pelagic longline fishery [Sec. 109(h); 71-72]

N-16.01 TRANSSHIPMENT PERMITS [Sec. 105(d)(1-7) pp. 15-18; Sec. 105(e) pp. 26-27]

N-17.01 PACIFIC INSULAR AREAS: Establish areas and associated programs [Sec. 105(e)(1)
(2) (5)]

N-17.02 PACIFIC INSULAR AREAS: Establish areas and associated programs [Sec.
105(e)(6) (7)]: Use of fees and establishment of fund prepare procedures and
guidelines

N-17.03 PACIFIC INSULAR AREAS: Establish areas and associated programs [Sec. 105(e)(8);
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N-18.01 COUNCILS: New NC seat on M-AFMC [Sec. 107(a)(4)]: Conduct appointment process
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N-18.02 COUNCILS: New Tribal seat on PFMC [Sec. 107; p. 29-32]:
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N-18.03 COUNCILS: New Tribal seat on PFMC [Sec. 107(a)(5); pp. 29-30]: Conduct
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38-39]:

N-19.01 FEES UNDER IFQ AND CDQ PROGRAMS [Sec. 109(c); pp. 63-64]: Establish a
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N-20.01 GEAR EVALUATION AND NOTIFICATION [Sec. 110(a); 73-74]

N-21.01 NEGOTIATED CONSERVATION AND MANAGEMENT PROCEDURES [Sec. 110(d); pp.
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N-22.01 CENTRAL REGISTRY SYSTEM FOR LIMITED ACCESS SYSTEM PERMITS [Sec.
111(c);
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N-23.01 STATE JURISDICTION: Internal waters foreign processing [Sec. 112(c)]: Revise ?
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N-23.02 STATE JURISDICTION: Internal waters foreign processing [Sec. 112(c)]: Establish a
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N-24.01 PROHIBITED ACTS [Sec. 113]: Review section 600.725 regulations for all provisions
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N-30.02	RESTRICTION ON USE OF CERTAIN INFORMATION [Sec. 203(c); p. 125]: Review regulations to ensure the confidentiality of information in tax returns
N-31.01	RESOURCE ASSESSMENTS [Sec. 203(e)(1-2); pp. 126-127]: Review policy for the use of private sector vessels equipment and services
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N-34.01	GULF OF MEXICO RED SNAPPER RESEARCH: Independent peer review [Sec. 207(b); pp. 136-140]
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N-40.02	TRANSITION TO MANAGEMENT OF AMERICAN LOBSTER FISHERY BY ASMFC [Sec. 404(c)]: Establish monitoring of landings of American lobster and implement conservation regulations
N-40.03 Completed	TRANSITION TO MANAGEMENT OF AMERICAN LOBSTER FISHERY BY ASMFC [Sec. 404(c)]: Revise current regulations to recognize validity of state permits in Federal waters
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CODE OF CONDUCT FOR RESPONSIBLE FISHERIES

Final Text

September 29, 1995

This text will be presented to the FAO Council at its meeting beginning October 19, 1995. The Council is expected to endorse the Code and recommend its adoption by the FAO Conference immediately following the Council.

C 95/20 (REV. 1)

Final Text of the Code of Conduct as Agreed During Technical Committee Meeting 25-29 SEPTEMBER 1995

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INTRODUCTION

Fisheries, including aquaculture, provide a vital source of food, employment, recreation, trade and economic well being for people throughout the world, both for present and future generations and should therefore be conducted in a responsible manner. This Code sets out principles and international standards of behaviour for responsible practices with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity. The Code recognises the nutritional, economic, social, environmental and cultural importance of fisheries, and the interests of all those concerned with the fishery sector. The Code takes into account the biological characteristics of the resources and their environment and the interests of consumers and other users. States and all those involved in fisheries are encouraged to apply the Code and give effect to it.

ARTICLE 1 - NATURE AND SCOPE OF THE CODE

1.1 This Code is voluntary. However, certain parts of it are based on relevant rules of international law, including those reflected in the United Nations Convention on the Law of the Sea of 10 December 1982[1]. The Code also contains provisions that may be or have already been given binding effect by means of other obligatory legal instruments amongst the Parties, such as the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993, which, according to FAO Conference resolution 15/93, paragraph 3, forms an integral part of the Code.

1.2 The Code is global in scope, and is directed toward members and non-members of FAO, fishing entities, subregional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation of fishery resources and management and development of fisheries, such as fishers, those engaged in processing and marketing of fish and fishery products and other users of the aquatic environment in relation to fisheries.

1.3 The Code provides principles and standards applicable to the conservation, management and development of all fisheries. It also covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management.

1.4 In this Code, the reference to States includes the European Community in matters within its competence, and the term fisheries applies equally to capture fisheries and aquaculture.

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[1] References in this Code to the United Nations Convention on the Law of the Sea, 1982, or to other international agreements do not prejudice the position of any State with respect to signature, ratification or accession to the Convention or with respect to such other agreements.

ARTICLE 2 - OBJECTIVES OF THE CODE

The objectives of the Code are to:

(a) establish principles, in accordance with the relevant rules of international law, for responsible fishing and fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects;

(b) establish principles and criteria for the elaboration and implementation of national policies for responsible conservation of fisheries resources and fisheries management and development;

(c) serve as an instrument of reference to help States to establish or to improve the legal and institutional framework required for the exercise of responsible fisheries and in the formulation and implementation of appropriate measures;

(d) provide guidance which may be used where appropriate in the formulation and implementation of international agreements and other legal instruments, both binding and voluntary;

(e) facilitate and promote technical, financial and other cooperation in conservation of fisheries resources and fisheries management and development;

(f) promote the contribution of fisheries to food security and food quality, giving priority to the nutritional needs of local communities;

(g) promote protection of living aquatic resources and their environments and coastal areas;

(h) promote the trade of fish and fishery products in conformity with relevant international rules and avoid the use of measures that constitute hidden barriers to such trade;

(i) promote research on fisheries as well as on associated ecosystems and relevant environmental factors; and

(j) provide standards of conduct for all persons involved in the fisheries sector

ARTICLE 3 - RELATIONSHIP WITH OTHER INTERNATIONAL INSTRUMENTS

3.1 The Code is to be interpreted and applied in conformity with the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea, 1982. Nothing in this Code prejudices the rights, jurisdiction and duties of States under international law as reflected in the Convention.

3.2 The Code is also to be interpreted and applied:

(a) in a manner consistent with the relevant provisions of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;

(b) in accordance with other applicable rules of international law, including the respective obligations of States pursuant to international agreements to which they are party; and

(c) in the light of the 1992 Declaration of Cancun, the 1992 Rio Declaration on Environment and Development, and Agenda 21 adopted by the United Nations Conference on Environment and Development (UNCED), in particular Chapter 17 of Agenda 21, and other relevant declarations and international instruments.

ARTICLE 4 - IMPLEMENTATION, MONITORING AND UPDATING

4.1 All members and non-members of FAO, fishing entities and relevant subregional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation, management and utilization of fisheries resources and trade in fish and fishery products should collaborate in the fulfilment and implementation of the objectives and principles contained in this Code.

4.2 FAO, in accordance with its role within the United Nations system, will monitor the application and implementation of the Code and its effects on fisheries and the Secretariat will report accordingly to the Committee on Fisheries (COFI). All States, whether members or non-members of FAO, as well as relevant international organizations, whether governmental or non-governmental should actively cooperate with FAO in this work.

4.3 FAO, through its competent bodies, may revise the Code, taking into account developments in fisheries as well as reports to COFI on the implementation of the Code.

4.4 States and international organizations, whether governmental or non-governmental, should promote the understanding of the Code among those involved in fisheries, including, where practicable, by the introduction of schemes which would promote voluntary acceptance of the Code and its effective application.

ARTICLE 5 - SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

5.1 The capacity of developing countries to implement the recommendations of this Code should be duly taken into account.

5.2 In order to achieve the objectives of this Code and to support its effective implementation, countries, relevant intergovernmental and non-governmental organizations and financial institutions should give full recognition to the special circumstances and requirements of developing countries, including in particular the least-developed among them, and small island developing countries. States, relevant intergovernmental and non-governmental organizations and financial institutions should work for the adoption of measures to address the needs of developing States, especially in the areas of financial and technical assistance, technology transfer, training and scientific cooperation and in enhancing their ability to develop their own fisheries as well as to participate in high seas fisheries, including access to such fisheries.

ARTICLE 6 - GENERAL PRINCIPLES

6.1 States and users of living aquatic resources should conserve aquatic ecosystems. The right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the living aquatic resources.

6.2 Fisheries management should promote the maintenance of the quality, diversity and availability of fishery resources in sufficient quantities for present and future generations in the context of food security, poverty alleviation and sustainable development. Management measures should not only ensure the conservation of target species but also of species belonging to the same ecosystem or associated with or dependent upon the target species.

6.3 States should prevent overfishing and excess fishing capacity and should implement management measures to ensure that fishing effort is commensurate with the productive capacity of the fishery resources and their sustainable utilization. States should take measures to rehabilitate populations as far as possible and when appropriate.

6.4 Conservation and management decisions for fisheries should be based on the best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat, as well as relevant environmental, economic and social factors. States should assign priority to undertake research and data collection in order to improve scientific and technical knowledge of fisheries including their interaction with the ecosystem. In recognizing the transboundary nature of many aquatic ecosystems, States should encourage bilateral and multilateral cooperation in research, as appropriate.

6.5 States and subregional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment.

6.6 Selective and environmentally safe fishing gear and practices should be further developed and applied, to the extent practicable, in order to maintain biodiversity and to conserve the population structure and aquatic ecosystems and protect fish quality. Where proper selective and environmentally safe fishing gear and practices exist, they should be recognized and accorded a priority in establishing conservation and management measures for fisheries. States and users of aquatic ecosystems should minimize waste, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species.

6.7 The harvesting, handling, processing and distribution of fish and fishery products should be carried out in a manner which will maintain the nutritional value, quality and safety of the products, reduce waste and minimize negative impacts on the environment.

6.8 All critical fisheries habitats in marine and fresh water ecosystems, such as wetlands, mangroves, reefs, lagoons, nursery and spawning, should be protected and rehabilitated as far as possible and where necessary. Particular effort should be made to protect such habitats from destruction, degradation, pollution and other significant impacts resulting from human activities that threaten the health and viability of the fishery resources.

6.9 States should ensure that their fisheries interests, including the need for conservation of the resources, are taken into account in the multiple uses of the coastal zone and are integrated into coastal area management, planning and development.

6.10 Within their respective competences and in accordance with international law, including within the framework of subregional or regional fisheries conservation and management organizations or arrangements, States should ensure compliance with and enforcement of conservation and management measures and establish effective mechanisms, as appropriate, to monitor and control the activities of fishing vessels and fishing support vessels.

6.11 States authorizing fishing and fishing support vessels to fly their flags should exercise effective control over those vessels so as to ensure the proper application of this Code. They should ensure that the activities of such vessels do not undermine the effectiveness of conservation and management measures taken in accordance with international law and adopted at the national, subregional, regional or global levels. States should also ensure that vessels flying their flags fulfil their obligations concerning the collection and provision of data relating to their fishing activities.

6.12 States should, within their respective competences and in accordance with international law, cooperate at subregional, regional and global levels through fisheries management organizations, other international agreements or other arrangements to promote conservation and management, ensure responsible fishing and ensure effective conservation and protection of living aquatic resources throughout their range of distribution, taking into account the need for compatible measures in areas within and beyond national jurisdiction.

6.13 States should, to the extent permitted by national laws and regulations, ensure that decision making processes are transparent and achieve timely solutions to urgent matters. States, in accordance with appropriate procedures, should facilitate consultation and the effective participation of industry, fishworkers, environmental and other interested organizations in decision making with respect to the development of laws and policies related to fisheries management, development, international lending and aid.

6.14 International trade in fish and fishery products should be conducted in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement and other relevant international agreements. States should ensure that their policies, programmes and practices related to trade in fish and fishery products do not result in obstacles to this trade, environmental degradation or negative social, including nutritional, impacts.

6.15 States should cooperate in order to prevent disputes. All disputes relating to fishing activities and practices should be resolved in a timely, peaceful and cooperative manner, in accordance with applicable international agreements or as may otherwise be agreed between the parties. Pending settlement of a dispute, the States concerned should make every effort to enter into provisional arrangements of a practical nature which should be without prejudice to the final outcome of any dispute settlement procedure.

6.16 States, recognising the paramount importance to fishers and fishfarmers of understanding the conservation and management of the fishery resources on which they depend, should promote awareness of responsible fisheries through education and training. They should ensure that fishers and fishfarmers are involved in the policy formulation and implementation process, also with a view to facilitating the implementation of the Code.

6.17 States should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair working and living conditions and meet internationally agreed standards adopted by relevant international organizations.

6.18 Recognizing the important contributions of artisanal and small-scale fisheries to employment, income and food security, States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.

6.19 States should consider aquaculture, including culture-based fisheries, as a means to promote diversification of income and diet. In so doing, States should ensure that resources are used responsibly and adverse impacts on the environment and on local communities are minimized.

ARTICLE 7 - FISHERIES MANAGEMENT

7.1 General

7.1.1 States and all those engaged in fisheries management should, through an appropriate policy, legal and institutional framework, adopt measures for the long-term conservation and sustainable use of fisheries resources. Conservation and management measures, whether at local, national, subregional or regional levels, should be based on the best scientific evidence available and be designed to ensure the long-term sustainability of fishery resources at levels which promote the objective of their optimum utilization and maintain their availability for present and future generations; short term considerations should not compromise these objectives.

7.1.2 Within areas under national jurisdiction, States should seek to identify relevant domestic parties having a legitimate interest in the use and management of fisheries resources and establish arrangements for consulting them to gain their collaboration in achieving responsible fisheries.

7.1.3 For transboundary fish stocks, straddling fish stocks, highly migratory fish stocks and high seas fish stocks, where these are exploited by two or more States, the States concerned, including the relevant coastal States in the case of straddling and highly migratory stocks, should cooperate to ensure effective conservation and management of the resources. This should be achieved, where appropriate, through the establishment of a bilateral, subregional or regional fisheries organization or arrangement.

7.1.4 A subregional or regional fisheries management organization or arrangement should include representatives of States in whose jurisdictions the resources occur, as well as representatives from States which have a real interest in the fisheries on the resources outside national jurisdictions. Where a subregional or regional fisheries management organization or arrangement exists and has the competence to establish conservation and management measures, those States should cooperate by becoming a member of such organization or a participant in such arrangement, and actively participate in its work.

7.1.5 A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement should nevertheless cooperate, in accordance with relevant international agreements and international law, in the conservation and management of the relevant fisheries resources by giving effect to any conservation and management measures adopted by such organization or arrangement.

7.1.6 Representatives from relevant organizations, both governmental and non-governmental, concerned with fisheries should be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such representatives should be given timely access to the records and reports of such meetings, subject to the procedural rules on access to them.

7.1.7 States should establish, within their respective competences and capacities, effective mechanisms for fisheries monitoring, surveillance, control and enforcement to ensure compliance with their conservation and management measures, as well as those adopted by subregional or regional organizations or arrangements.

7.1.6 States should take measures to prevent or eliminate excess fishing capacity and should ensure that levels of fishing effort are commensurate with the sustainable use of fishery resources as a means of ensuring the effectiveness of conservation and management measures.

.9 States and subregional or regional fisheries management organizations and arrangements should ensure transparency in the mechanisms for fisheries management and in the related decision-making process.

7.1.10 States and subregional or regional fisheries management organizations and arrangements should give due publicity to conservation and management measures and ensure that laws, regulations and other legal rules governing their implementation are effectively disseminated. The bases and purposes of such measures should be explained to users of the resource in order to facilitate their application and thus gain increased support in the implementation of such measures.

7.2 Management objectives

7.2.1 Recognizing that long-term sustainable use of fisheries resources is the overriding objective of conservation and management, States and subregional or regional fisheries management organizations and arrangements should, *inter alia*, adopt appropriate measures, based on the best scientific evidence available, which are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing countries.

7.2.2 Such measures should provide *inter alia* that:

(a) excess fishing capacity is avoided and exploitation of the stocks remains economically viable;

(b) the economic conditions under which fishing industries operate promote responsible fisheries;

(c) the interests of fishers, including those engaged in subsistence, small-scale and artisanal fisheries, are taken into account;

(d) biodiversity of aquatic habitats and ecosystems is conserved and endangered species are protected;

(e) depleted stocks are allowed to recover or, where appropriate, are actively restored;

(f) adverse environmental impacts on the resources from human activities are assessed and, where appropriate, corrected; and

(g) pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species are minimized, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.

7.2.3 States should assess the impacts of environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks, and assess the relationship among the populations in the ecosystem.

7.3 Management framework and procedures

7.3.1 To be effective, fisheries management should be concerned with the whole stock unit over entire area of distribution and take into account previously agreed management measures established and applied in the same region, all removals and the biological unity and other biological characteristics of the stock. The best scientific evidence available should be used to determine, *inter alia*, the area of distribution of the resource and the area through which it migrates during its life cycle.

7.3.2 In order to conserve and manage transboundary fish stocks, straddling fish stocks, highly migratory fish stocks and high seas fish stocks throughout their range, conservation and management measures established for such stocks in accordance with the respective competences of relevant States or, where appropriate, through subregional and regional fisheries management organizations and arrangements, should be compatible. Compatibility should be achieved in a manner consistent with the rights, competences and interests of the States concerned.

7.3.3 Long-term management objectives should be translated into management actions, formulated in a fishery management plan or other management framework.

7.3.4 States and, where appropriate, subregional or regional fisheries management organizations and arrangements should foster and promote international cooperation and coordination in all matters related to fisheries, including information gathering and exchange, fisheries research, management and development.

7.3.5 States seeking to take any action through a non-fishery organization which may affect the conservation and management measures taken by a competent subregional or regional fisheries management organization or arrangement should consult with the latter, in advance to the extent practicable, and take its views into account.

7.4 Data gathering and management advice

7.4.1 When considering the adoption of conservation and management measures, the best scientific evidence available should be taken into account in order to evaluate the current state of the fishery resources and the possible impact of the proposed measures on the resources.

7.4.2 Research in support of fishery conservation and management should be promoted, including research on the resources and on the effects of climatic, environmental and socio-economic factors. The results of such research should be disseminated to interested parties.

7.4.3 Studies should be promoted which provide an understanding of the costs, benefits and effects of alternative management options designed to rationalize fishing, in particular, options relating to excess fishing capacity and excessive levels of fishing effort.

7.4.4 States should ensure that timely, complete and reliable statistics on catch and fishing effort are collected and maintained in accordance with applicable international standards and practices and in sufficient detail to allow sound statistical analysis. Such data should be updated regularly and verified through an appropriate system. States should compile and disseminate such data in a manner consistent with any applicable confidentiality requirements.

7.4.5 In order to ensure sustainable management of fisheries and to enable social and economic objectives to be achieved, sufficient knowledge of social, economic and institutional factors should be developed through data gathering, analysis and research.

7.4.6 States should compile fishery-related and other supporting scientific data relating to fish stocks covered by subregional or regional fisheries management organizations or arrangements in an internationally agreed format and provide them in a timely manner to the organization or arrangement. In cases of stocks which occur in the jurisdiction of more than one State and for which there is no such organization or arrangement, the States concerned should agree on a mechanism for cooperation to compile and exchange such data.

7.4.7 Subregional or regional fisheries management organizations or arrangements should compile data and make them available, in a manner consistent with any applicable confidentiality requirements, in a timely manner and in an agreed format to all members of these organizations and other interested parties in accordance with agreed procedures.

7.5 Precautionary approach

7.5.1 States should apply the precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment. The absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures.

7.5.2 In implementing the precautionary approach, States should take into account, *inter alia*, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities, including discards, on non-target and associated or dependant species, as well as environmental and socio-economic conditions.

7.5.3 States and subregional or regional fisheries management organizations and arrangements should, on the basis of the best scientific evidence available, *inter alia*, determine:

(a) stock specific target reference points, and, at the same time, the action to be taken if they are exceeded; and

(b) stock-specific limit reference points, and, at the same time, the action to be taken if they are exceeded; when a limit reference point is approached, measures should be taken to ensure that it will not be exceeded.

7.5.4 In the case of new or exploratory fisheries, States should adopt as soon as possible cautious conservation and management measures, including, *inter alia*, catch limits and effort limits. Such measures should remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment should be implemented. The latter measures should, if appropriate, allow for the gradual development of the fisheries.

7.5.5 If a natural phenomenon has a significant adverse impact on the status of living aquatic resources, States should adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States should also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such resources. Measures taken on an emergency basis should be temporary and should be based on the best scientific evidence available.

7.6 Management measures

7.6.1 States should ensure that the level of fishing permitted is commensurate with the state of fisheries resources.

7.6.2 States should adopt measures to ensure that no vessel be allowed to fish unless so authorized, in a manner consistent with international law for the high seas or in conformity with national legislation within areas of national jurisdiction.

7.6.3 Where excess fishing capacity exists, mechanisms should be established to reduce capacity to levels commensurate with the sustainable use of fisheries resources so as to ensure that fishers operate under economic conditions that promote responsible fisheries. Such mechanisms should include monitoring the capacity of fishing fleets.

7.6.4 The performance of all existing fishing gear, methods and practices should be examined and measures taken to ensure that fishing gear, methods and practices which are not consistent with responsible fishing are phased out and replaced with more acceptable alternatives. In this process, particular attention should be given to the impact of such measures on fishing communities, including their ability to exploit the resource.

7.6.5 States and fisheries management organizations and arrangements should regulate fishing in such a way as to avoid the risk of conflict among fishers using different vessels, gear and fishing methods.

7.6.6 When deciding on the use, conservation and management of fisheries resources, due recognition should be given, as appropriate, in accordance with national laws and regulations, to the traditional practices, needs and interests of indigenous people and local fishing communities which are highly dependent on fishery resources for their livelihood.

7.6.7 In the evaluation of alternative conservation and management measures, their cost-effectiveness and social impact should be considered.

7.6.8 The efficacy of conservation and management measures and their possible interactions should be kept under continuous review. Such measures should, as appropriate, be revised or abolished in the light of new information.

7.6.9 States should take appropriate measures to minimize waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and negative impacts on associated or dependent species, in particular endangered species. Where appropriate, such measures may include technical measures related to fish size, mesh size or gear, discards, closed seasons and areas and zones reserved for selected fisheries, particularly artisanal fisheries. Such measures should be applied, where appropriate, to protect juveniles and spawners. States and subregional or regional fisheries management organizations and arrangements should promote, to the extent practicable, the development and use of selective, environmentally safe and cost effective gear and techniques.

7.6.10 States and subregional and regional fisheries management organizations and arrangements, in the framework of their respective competences, should introduce measures for depleted resources and those resources threatened with depletion that facilitate the sustained recovery of such stocks. They should make every effort to ensure that resources and habitats critical to the well-being of such resources which have been adversely affected by fishing or other human activities are restored.

7.7 Implementation

7.7.1 States should ensure that an effective legal and administrative framework at the local and national level, as appropriate, is established for fisheries resource conservation and fisheries management.

6.7.2 States should ensure that laws and regulations provide for sanctions applicable in respect of violations which are adequate in severity to be effective, including sanctions which allow for the refusal, withdrawal or suspension of authorizations to fish in the event of non-compliance with conservation and management measures in force.

7.7.3 States, in conformity with their national laws, should implement effective fisheries monitoring, control, surveillance and law enforcement measures including, where appropriate, observer programmes, inspection schemes and vessel monitoring systems. Such measures should be promoted and, where appropriate, implemented by subregional or regional fisheries management organizations and arrangements in accordance with procedures agreed by such organizations or arrangements.

7.4 States and subregional or regional fisheries management organizations and arrangements, as appropriate, should agree on the means by which the activities of such organizations and arrangements will be financed, bearing in mind, *inter alia*, the relative benefits derived from the fishery and the differing capacities of countries to provide financial and other contributions. Where appropriate, and when possible, such organizations and arrangements should aim to recover the costs of fisheries conservation, management and research.

7.7.5 States which are members of or participants in subregional or regional fisheries management organizations or arrangements should implement internationally agreed measures adopted in the framework of such organizations or arrangements and consistent with international law to deter the activities of vessels flying the flag of non-members or non-participants which engage in activities which undermine the effectiveness of conservation and management measures established by such organizations or arrangements.

7.8 Financial institutions

7.8.1 Without prejudice to relevant international agreements, States should encourage banks and financial institutions not to require, as a condition of a loan or mortgage, fishing vessels or fishing support vessels to be flagged in a jurisdiction other than that of the State of beneficial ownership where such a requirement would have the effect of increasing the likelihood of non-compliance with international conservation and management measures.

ARTICLE 8 - FISHING OPERATIONS

8.1 Duties of all States

8.1.1 States should ensure that only fishing operations allowed by them are conducted within waters under their jurisdiction and that these operations are carried out in a responsible manner.

8.1.2 States should maintain a record, updated at regular intervals, on all authorizations to fish issued by them.

8.1.3 States should maintain, in accordance with recognized international standards and practices, statistical data, updated at regular intervals, on all fishing operations allowed by them.

8.1.4 States should, in accordance with international law, within the framework of subregional or regional fisheries management organizations or arrangements, cooperate to establish systems for monitoring, control, surveillance and enforcement of applicable measures with respect to fishing operations and related activities in waters outside their national jurisdiction.

8.1.5 States should ensure that health and safety standards are adopted for everyone employed in fishing operations. Such standards should be not less than the minimum requirements of relevant international agreements on conditions of work and service.

8.1.6 States should make arrangements individually, together with other States or with the appropriate international organization to integrate fishing operations into maritime search and rescue systems.

8.1.7 States should enhance through education and training programmes the education and skills of fishers and, where appropriate, their professional qualifications. Such programmes should take into account agreed international standards and guidelines.

8.1.8 States should, as appropriate, maintain records of fishers which should, whenever possible, contain information on their service and qualifications, including certificates of competency, in accordance with their national laws.

8.1.9 States should ensure that measures applicable in respect of masters and other officers charged with an offence relating to the operation of fishing vessels should include provisions which may permit, *inter alia*, refusal, withdrawal or suspension of authorizations to serve as masters or officers of a fishing vessel.

8.1.10 States, with the assistance of relevant international organizations, should endeavour to ensure through education and training that all those engaged in fishing operations be given information on the most important provisions of this Code, as well as provisions of relevant international conventions and applicable environmental and other standards that are essential to ensure responsible fishing operations.

8.2 Flag State duties

8.2.1 Flag States should maintain records of fishing vessels entitled to fly their flag and authorized to be used for fishing and should indicate in such records details of the vessels, their ownership and authorization to fish.

8.2.2 Flag States should ensure that no fishing vessels entitled to fly their flag fish on the high seas or in waters under the jurisdiction of other States unless such vessels have been issued with a Certificate of Registry and have been authorized to fish by the competent authorities. Such vessels should carry on board the Certificate of Registry and their authorization to fish.

8.2.3 Fishing vessels authorized to fish on the high seas or in waters under the jurisdiction of a State other than the flag State, should be marked in accordance with uniform and internationally recognizable vessel marking systems such as the FAO Standard Specifications and Guidelines for Marking and Identification of Fishing Vessels.

8.2.4 Fishing gear should be marked in accordance with national legislation in order that the owner of the gear can be identified. Gear marking requirements should take into account uniform and internationally recognizable gear marking systems.

8.2.5 Flag States should ensure compliance with appropriate safety requirements for fishing vessels and fishers in accordance with international conventions, internationally agreed codes of practice and voluntary guidelines. States should adopt appropriate safety requirements for all small vessels not covered by such international conventions, codes of practice or voluntary guidelines.

8.2.6 States not party to the Agreement to Promote Compliance with International Conservation and Management Measures by Vessels Fishing in the High Seas should be encouraged to accept the Agreement and to adopt laws and regulations consistent with the provisions of the Agreement.

8.2.7 Flag States should take enforcement measures in respect of fishing vessels entitled to fly their flag which have been found by them to have contravened applicable conservation and management measures, including, where appropriate, making the contravention of such measures an offence under national legislation. Sanctions applicable in respect of violations should be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and should deprive offenders of the benefits accruing from their illegal activities. Such sanctions may, for serious violations, include provisions for the refusal, withdrawal or suspension of the authorization to fish.

8.2.8 Flag States should promote access to insurance coverage by owners and charterers of fishing vessels. Owners or charterers of fishing vessels should carry sufficient insurance cover to protect the crew of such vessels and their interests, to indemnify third parties against loss or damage and to protect their own interests.

8.2.9 Flag States should ensure that crew members are entitled to repatriation, taking account of the principles laid down in the "Repatriation of Seafarers Convention (Revised), 1987, (No.166)".

8.2.10 In the event of an accident to a fishing vessel or persons on board a fishing vessel, the flag State of the fishing vessel concerned should provide details of the accident to the State of any foreign national on board the vessel involved in the accident. Such information should also, where practicable, be communicated to the International Maritime Organization.

8.3 Port State duties

8.3.1 Port States should take, through procedures established in their national legislation, in accordance with international law, including applicable international agreements or arrangements, such measures as are necessary to achieve and to assist other States in achieving the objectives of this Code, and should make known to other States details of regulations and measures they have established for this purpose. When taking such measures a port State should not discriminate in form or in fact against the vessels of any other State.

8.3.2 Port States should provide such assistance to flag States as is appropriate, in accordance with the national laws of the port State and international law, when a fishing vessel is voluntarily in a port or at an offshore terminal of the port State and the flag State of the vessel requests the port State for assistance in respect of non-compliance with subregional, regional or global conservation and management measures or with internationally agreed minimum standards for the prevention of pollution and for safety, health and conditions of work on board fishing vessels.

8.4 Fishing operations

8.4.1 States should ensure that fishing is conducted with due regard to the safety of human life and the International Maritime Organization International Regulations for Preventing Collisions at Sea, as well as International Maritime Organization requirements relating to the organization of marine traffic, protection of the marine environment and the prevention of damage to or loss of fishing gear.

8.4.2 States should prohibit dynamiting, poisoning and other comparable destructive fishing practices.

8.4.3 States should make every effort to ensure that documentation with regard to fishing operations, retained catch of fish and non-fish species and, as regards discards, the information required for stock assessment as decided by relevant management bodies, is collected and forwarded systematically to those bodies. States should, as far as possible, establish programmes, such as observer and inspection schemes, in order to promote compliance with applicable measures.

8.4.4 States should promote the adoption of appropriate technology, taking into account economic conditions, for the best use and care of the retained catch.

8.4.5 States, with relevant groups from industry, should encourage the development and implementation of technologies and operational methods that reduce discards. The use of fishing gear and practices that lead to the discarding of catch should be discouraged and the use of fishing gear and practices that increase survival rates of escaping fish should be promoted.

8.4.6 States should cooperate to develop and apply technologies, materials and operational methods that minimize the loss of fishing gear and the ghost fishing effects of lost or abandoned fishing gear.

8.4.7 States should ensure that assessments of the implications of habitat disturbance are carried out prior to the introduction on a commercial scale of new fishing gear, methods and operations to an area.

8.4.8 Research on the environmental and social impacts of fishing gear and, in particular, on the impact of such gear on biodiversity and coastal fishing communities should be promoted.

8.5 Fishing gear selectivity

8.5.1 States should require that fishing gear, methods and practices, to the extent practicable, are sufficiently selective so as to minimize waste, discards, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species and that the intent of related regulations is not circumvented by technical devices. In this regard, fishers should cooperate in the development of selective fishing gear and methods. States should ensure that information on new developments and requirements is made available to all fishers.

8.5.2 In order to improve selectivity, States should, when drawing up their laws and regulations, take into account the range of selective fishing gear, methods and strategies available to the industry.

8.5.3 States and relevant institutions should collaborate in developing standard methodologies for research into fishing gear selectivity, fishing methods and strategies.

8.5.4 International cooperation should be encouraged with respect to research programmes for fishing gear selectivity, and fishing methods and strategies, dissemination of the results of such research programmes and the transfer of technology.

8.6 Energy optimization

8.6.1 States should promote the development of appropriate standards and guidelines which would lead to the more efficient use of energy in harvesting and post-harvest activities within the fisheries sector.

8.6.2 States should promote the development and transfer of technology in relation to energy optimization within the fisheries sector and, in particular, encourage owners, charterers and managers of fishing vessels to fit energy optimization devices to their vessels.

8.7 Protection of the aquatic environment

8.7.1 States should introduce and enforce laws and regulations based on the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

8.7.2 Owners, charterers and managers of fishing vessels should ensure that their vessels are fitted with appropriate equipment as required by MARPOL 73/78 and should consider fitting a shipboard compactor or incinerator to relevant classes of vessels in order to treat garbage and other shipboard wastes generated during the vessel's normal service.

8.7.3 Owners, charterers and managers of fishing vessels should minimize the taking aboard of potential garbage through proper provisioning practices.

8.7.4 The crew of fishing vessels should be conversant with proper shipboard procedures in order to ensure discharges do not exceed the levels set by MARPOL 73/78. Such procedures should, as a minimum, include the disposal of oily waste and the handling and storage of shipboard garbage.

8.8 Protection of the atmosphere

8.8.1 States should adopt relevant standards and guidelines which would include provisions for the reduction of dangerous substances in exhaust gas emissions.

8.8.2 Owners, charterers and managers of fishing vessels should ensure that their vessels are fitted with equipment to reduce emissions of ozone depleting substances. The responsible crew members of fishing vessels should be conversant with the proper running and maintenance of machinery on board.

8.8.3 Competent authorities should make provision for the phasing out of the use of chlorofluorocarbons (CFCs) and transitional substances such as hydrochlorofluorocarbons (HCFCs) in the refrigeration systems of fishing vessels and should ensure that the shipbuilding industry and those engaged in the fishing industry are informed of and comply with such provisions.

8.8.4 Owners or managers of fishing vessels should take appropriate action to refit existing vessels with alternative refrigerants to CFCs and HCFCs and alternatives to Halons in fire fighting installations. Such alternatives should be used in specifications for all new fishing vessels.

8.8.5 States and owners, charterers and managers of fishing vessels as well as fishers should follow international guidelines for the disposal of CFCs, HCFCs and Halons.

8.9 Harbours and landing places for fishing vessels

8.9.1 States should take into account, *inter alia*, the following in the design and construction of harbours and landing places:

(a) safe havens for fishing vessels and adequate servicing facilities for vessels, vendors and buyers are provided;

(b) adequate freshwater supplies and sanitation arrangements should be provided;

(c) waste disposal systems should be introduced, including for the disposal of oil, oily water and fishing gear;

(d) pollution from fisheries activities and external sources should be minimized; and

(e) arrangements should be made to combat the effects of erosion and siltation.

8.9.2 States should establish an institutional framework for the selection or improvement of sites for harbours for fishing vessels which allows for consultation among the authorities responsible for coastal area management.

8.10 Abandonment of structures and other materials

8.10.1 States should ensure that the standards and guidelines for the removal of redundant offshore structures issued by the International Maritime Organization are followed. States should also ensure that the competent fisheries authorities are consulted prior to decisions being made on the abandonment of structures and other materials by the relevant authorities.

8.11 Artificial reefs and fish aggregation devices

8.11.1 States, where appropriate, should develop policies for increasing stock populations and enhancing fishing opportunities through the use of artificial structures, placed with due regard to the safety of navigation, on or above the seabed or at the surface. Research into the use of such structures, including the impacts on living marine resources and the environment, should be promoted.

8.11.2 States should ensure that, when selecting the materials to be used in the creation of artificial reefs as well as when selecting the geographical location of such artificial reefs, the provisions of relevant international conventions concerning the environment and safety of navigation are observed.

8.11.3 States should, within the framework of coastal area management plans, establish management systems for artificial reefs and fish aggregation devices. Such management systems should require approval for the construction and deployment of such reefs and devices and should take into account the interests of fishers, including artisanal and subsistence fishers.

8.11.4 States should ensure that the authorities responsible for maintaining cartographic records and charts for the purpose of navigation, as well as relevant environmental authorities, are informed prior to the placement or removal of artificial reefs or fish aggregation devices.

ARTICLE 9 - AQUACULTURE DEVELOPMENT

9.1 Responsible development of aquaculture, including culture-based fisheries, in areas under national jurisdiction

9.1.1 States should establish, maintain and develop an appropriate legal and administrative framework which facilitates the development of responsible aquaculture.

9.1.2 States should promote responsible development and management of aquaculture, including an advance evaluation of the effects of aquaculture development on genetic diversity and ecosystem integrity, based on the best available scientific information.

9.1.3 States should produce and regularly update aquaculture development strategies and plans, as required, to ensure that aquaculture development is ecologically sustainable and to allow the rational use of resources shared by aquaculture and other activities.

9.1.4 States should ensure that the livelihoods of local communities, and their access to fishing grounds, are not negatively affected by aquaculture developments.

9.1.5 States should establish effective procedures specific to aquaculture to undertake appropriate environmental assessment and monitoring with the aim of minimizing adverse ecological changes and related economic and social consequences resulting from water extraction, land use, discharge of effluents, use of drugs and chemicals, and other aquaculture activities.

9.2 Responsible development of aquaculture including culture-based fisheries within transboundary aquatic ecosystems

9.2.1 States should protect transboundary aquatic ecosystems by supporting responsible aquaculture practices within their national jurisdiction and by cooperation in the promotion of sustainable aquaculture practices.

9.2.2 States should, with due respect to their neighbouring States, and in accordance with international law, ensure responsible choice of species, siting and management of aquaculture activities which could affect transboundary aquatic ecosystems.

9.2.3 States should consult with their neighbouring States, as appropriate, before introducing non-indigenous species into transboundary aquatic ecosystems.

9.2.4 States should establish appropriate mechanisms, such as databases and information networks to collect, share and disseminate data related to their aquaculture activities to facilitate cooperation on planning for aquaculture development at the national, subregional, regional and global level.

9.2.5 States should cooperate in the development of appropriate mechanisms, when required, to monitor the impacts of inputs used in aquaculture.

9.3 Use of aquatic genetic resources for the purposes of aquaculture including culture-based fisheries

9.3.1 States should conserve genetic diversity and maintain integrity of aquatic communities and ecosystems by appropriate management. In particular, efforts should be undertaken to minimize the harmful effects of introducing non-native species or genetically altered stocks used for aquaculture including culture-based fisheries into waters, especially where there is a significant potential for the spread of such non-native species or genetically altered stocks into waters under the jurisdiction of other States as well as waters under the jurisdiction of the State of origin. States should, whenever possible, promote steps to minimize adverse genetic, disease and other effects of escaped farmed fish on wild stocks.

9.3.2 States should cooperate in the elaboration, adoption and implementation of international codes of practice and procedures for introductions and transfers of aquatic organisms.

9.3.3 States should, in order to minimize risks of disease transfer and other adverse effects on wild and cultured stocks, encourage adoption of appropriate practices in the genetic improvement of broodstocks, the introduction of non-native species, and in the production, sale and transport of eggs, larvae or fry, broodstock or other live materials. States should facilitate the preparation and implementation of appropriate national codes of practice and procedures to this effect.

9.3.4 States should promote the use of appropriate procedures for the selection of broodstock and the production of eggs, larvae and fry.

9.3.5 States should, where appropriate, promote research and, when feasible, the development of culture techniques for endangered species to protect, rehabilitate and enhance their stocks, taking into account the critical need to conserve genetic diversity of endangered species.

9.4 Responsible aquaculture at the production level

9.4.1 States should promote responsible aquaculture practices in support of rural communities, producer organizations and fish farmers.

9.4.2 States should promote active participation of fishfarmers and their communities in the development of responsible aquaculture management practices.

9.4.3 States should promote efforts which improve selection and use of appropriate feeds, feed additives and fertilizers, including manures.

9.4.4 States should promote effective farm and fish health management practices favouring hygienic measures and vaccines. Safe, effective and minimal use of therapeutants, hormones and drugs, antibiotics and other disease control chemicals should be ensured.

9.4.5 States should regulate the use of chemical inputs in aquaculture which are hazardous to human health and the environment.

9.4.6 States should require that the disposal of wastes such as offal, sludge, dead or diseased fish, excess veterinary drugs and other hazardous chemical inputs does not constitute a hazard to human health and the environment.

9.4.7 States should ensure the food safety of aquaculture products and promote efforts which maintain product quality and improve their value through particular care before and during harvesting and on-site processing and in storage and transport of the products.

ARTICLE 10 - INTEGRATION OF FISHERIES INTO COASTAL AREA MANAGEMENT

10.1 Institutional framework

10.1.1 States should ensure that an appropriate policy, legal and institutional framework is adopted to achieve the sustainable and integrated use of the resources, taking into account the fragility of coastal ecosystems and the finite nature of their natural resources and the needs of coastal communities.

10.1.2 In view of the multiple uses of the coastal area, States should ensure that representatives of the fisheries sector and fishing communities are consulted in the decision-making processes and involved in other activities related to coastal area management planning and development.

10.1.3 States should develop, as appropriate, institutional and legal frameworks in order to determine the possible uses of coastal resources and to govern access to them taking into account the rights of coastal fishing communities and their customary practices to the extent compatible with sustainable development.

10.1.4 States should facilitate the adoption of fisheries practices that avoid conflict among fisheries resources users and between them and other users of the coastal area.

10.1.5 States should promote the establishment of procedures and mechanisms at the appropriate administrative level to settle conflicts which arise within the fisheries sector and between fisheries resource users and other users of the coastal area.

10.2 Policy measures

10.2.1 States should promote the creation of public awareness of the need for the protection and management of coastal resources and the participation in the management process by those affected.

10.2.2 In order to assist decision-making on the allocation and use of coastal resources, States should promote the assessment of their respective value taking into account economic, social and cultural factors.

10.2.3 In setting policies for the management of coastal areas, States should take due account of the risks and uncertainties involved.

10.2.4 States, in accordance with their capacities, should establish or promote the establishment of systems to monitor the coastal environment as part of the coastal management process using physical, chemical, biological, economic and social parameters.

10.2.5 States should promote multi-disciplinary research in support of coastal area management, in particular on its environmental, biological, economic, social, legal and institutional aspects.

10.3 Regional cooperation

10.3.1 States with neighbouring coastal areas should cooperate with one another to facilitate the sustainable use of coastal resources and the conservation of the environment.

10.3.2 In the case of activities that may have an adverse transboundary environmental effect on coastal areas, States should:

a) provide timely information and, if possible, prior notification to potentially affected States:

b) consult with those States as early as possible.

10.3.3 States should cooperate at the subregional and regional level in order to improve coastal area management.

10.4 Implementation

10.4.1 States should establish mechanisms for cooperation and coordination among national authorities involved in planning, development, conservation and management of coastal areas.

10.4.2 States should ensure that the authority or authorities representing the fisheries sector in the coastal management process have the appropriate technical capacities and financial resources.

ARTICLE 11 - POST-HARVEST PRACTICES AND TRADE

11.1 Responsible fish utilization

11.1.1 States should adopt appropriate measures to ensure the right of consumers to safe, wholesome and unadulterated fish and fishery products.

11.1.2 States should establish and maintain effective national safety and quality assurance systems to protect consumer health and prevent commercial fraud.

11.1.3 States should set minimum standards for safety and quality assurance and make sure that these standards are effectively applied throughout the industry. They should promote the implementation of quality standards agreed within the context of the FAO/WHO Codex Alimentarius Commission and other relevant organizations or arrangements.

11.1.4 States should cooperate to achieve harmonization, or mutual recognition, or both, of national sanitary measures and certification programmes as appropriate and explore possibilities for the establishment of mutually recognized control and certification agencies.

11.1.5 States should give due consideration to the economic and social role of the post-harvest fisheries sector when formulating national policies for the sustainable development and utilization of fishery resources.

11.1.6 States and relevant organizations should sponsor research in fish technology and quality assurance and support projects to improve post-harvest handling of fish, taking into account the economic, social, environmental and nutritional impact of such projects.

11.1.7 States, noting the existence of different production methods, should through cooperation and by facilitating the development and transfer of appropriate technologies, ensure that processing, transporting and storage methods are environmentally sound.

11.1.8 States should encourage those involved in fish processing, distribution and marketing to:

(a) reduce post-harvest losses and waste;

(b) improve the use of by-catch to the extent that this is consistent with responsible fisheries management practices; and

(c) use the resources, especially water and energy, in particular wood, in an environmentally sound manner.

11.1.9 States should encourage the use of fish for human consumption and promote consumption of fish whenever appropriate.

11.1.10 States should cooperate in order to facilitate the production of value-added products by developing countries.

11.1.11 States should ensure that international and domestic trade in fish and fishery products accords with sound conservation and management practices through improving the identification of the origin of fish and fishery products traded.

11.1.12 States should ensure that environmental effects of post-harvest activities are considered in the development of related laws, regulations and policies without creating any market distortions.

11.2 Responsible international trade

11.2.1 The provisions of this Code should be interpreted and applied in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement.

11.2.2 International trade in fish and fishery products should not compromise the sustainable development of fisheries and responsible utilization of living aquatic resources.

11.2.3 States should ensure that measures affecting international trade in fish and fishery products are transparent, based, when applicable, on scientific evidence, and are in accordance with internationally agreed rules.

11.2.4 Fish trade measures adopted by States to protect human or animal life or health, the interests of consumers or the environment, should not be discriminatory and should be in accordance with internationally agreed trade rules, in particular the principles, rights and obligations established in the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade of the WTO.

11.2.5 States should further liberalize trade in fish and fishery products and eliminate barriers and distortions to trade such as duties, quotas and non-tariff barriers in accordance with the principles, rights and obligations of the WTO Agreement.

11.2.6 States should not directly or indirectly create unnecessary or hidden barriers to trade which limit the consumer's freedom of choice of supplier or that restrict market access.

11.2.7 States should not condition access to markets to access to resources. This principle does not preclude the possibility of fishing agreements between States which include provisions referring to access to resources, trade and access to markets, transfer of technology, scientific research, training and other relevant elements.

11.2.8 States should not link access to markets to the purchase of specific technology or sale of other products.

11.2.9 States should cooperate in complying with relevant international agreements regulating trade in endangered species.

11.2.10 States should develop international agreements for trade in live specimens where there is a risk of environmental damage in importing or exporting States.

11.2.11 States should cooperate to promote adherence to, and effective implementation of relevant international standards for trade in fish and fishery products and living aquatic resource conservation.

11.2.12 States should not undermine conservation measures for living aquatic resources in order to gain trade or investment benefits.

11.2.13 States should cooperate in develop internationally acceptable rules or standards for trade in fish and fishery products in accordance with the principles, rights, and obligations established in the WTO Agreement.

11.2.14 States should cooperate with each other and actively participate in relevant regional and multilateral fora, such as the WTO, in order to ensure equitable, non-discriminatory trade in fish and fishery products as well as wide adherence to multilaterally agreed fishery conservation measures.

11.2.15 States, aid agencies, multilateral development banks and other relevant international organizations should ensure that their policies and practices related to the promotion of international fish trade and export production do not result in environmental degradation or adversely impact the nutritional rights and needs of people for whom fish is critical to their health and well being and for whom other comparable sources of food are not readily available or affordable.

11.3 Laws and regulations relating to fish trade

11.3.1 Laws, regulations and administrative procedures applicable to international trade in fish and fishery products should be transparent, as simple as possible, comprehensible and, when appropriate, based on scientific evidence.

11.3.2 States, in accordance with their national laws, should facilitate appropriate consultation with and participation of industry as well as environmental and consumer groups in the development and implementation of laws and regulations related to trade in fish and fishery products.

11.3.3 States should simplify their laws, regulations and administrative procedures applicable to trade in fish and fishery products without jeopardizing their effectiveness.

11.3.4 When a State introduces changes to its legal requirements affecting trade in fish and fishery products with other States, sufficient information and time should be given to allow the States and producers affected to introduce, as appropriate, the changes needed in their processes and procedures. In this connection, consultation with affected States on the time frame for implementation of the changes would be desirable. Due consideration should be given to requests from developing countries for temporary derogations from obligations.

11.3.5 States should periodically review laws and regulations applicable to international trade in fish and fishery products in order to determine whether the conditions which gave rise to their introduction continue to exist.

11.3.6 States should harmonize as far as possible the standards applicable to international trade in fish and fishery products in accordance with relevant internationally recognized provisions.

11.3.7 States should collect, disseminate and exchange timely, accurate and pertinent statistical information on international trade in fish and fishery products through relevant national institutions and international organizations.

11.3.8 States should promptly notify interested States, WTO and other appropriate international organizations on the development of and changes to laws, regulations and administrative procedures applicable to international trade in fish and fishery products.

ARTICLE 12 - FISHERIES RESEARCH

12.1 States should recognize that responsible fisheries requires the availability of a sound scientific basis to assist fisheries managers and other interested parties in making decisions. Therefore, States should ensure that appropriate research is conducted into all aspects of fisheries including biology, ecology, technology, environmental science, economics, social science, aquaculture and nutritional science. States should ensure the availability of research facilities and provide appropriate training, staffing and institution building to conduct the research, taking into account the special needs of developing countries.

12.2 States should establish an appropriate institutional framework to determine the applied research which is required and its proper use.

12.3 States should ensure that data generated by research are analyzed, that the results of such analyses are published, respecting confidentiality where appropriate, and distributed in a timely and readily understood fashion,in order that the best scientific evidence is made available as a contribution to fisheries conservation, management and development. In the absence of adequate scientific information, appropriate research should be initiated as soon as possible.

12.4 States should collect reliable and accurate data which are required to assess the status of fisheries and ecosystems, including data on bycatch, discards and waste. Where appropriate, this data should be provided, at an appropriate time and level of aggregation, to relevant States and subregional, regional and global fisheries organizations.

12.5 States should be able to monitor and assess the state of the stocks under their jurisdiction, including the impacts of ecosystem changes resulting from fishing pressure, pollution or habitat alteration. They should also establish the research capacity necessary to assess the effects of climate or environment change on fish stocks and aquatic ecosystems.

12.6 States should support and strengthen national research capabilities to meet acknowledged scientific standards.

12.7 States, as appropriate in cooperation with relevant international organizations, should encourage research to ensure optimum utilization of fishery resources and stimulate the research required to support national policies related to fish as food.

12.8 States should conduct research into, and monitor, human food supplies from aquatic sources and the environment from which they are taken and ensure that there is no adverse health impact on consumers. The results of such research should be made publicly available.

12.9 States should ensure that the economic, social, marketing and institutional aspects of fisheries are adequately researched and that comparable data are generated for ongoing monitoring, analysis and policy formulation.

12.10 States should carry out studies on the selectivity of fishing gear, the environmental impact of fishing gear on target species and on the behaviour of target and non-target species in relation to such fishing gear as an aid for management decisions and with a view to minimizing non-utilized catches as well as safeguarding the biodiversity of ecosystems and the aquatic habitat.

12.11 States should ensure that before the commercial introduction of new types of gear, a scientific evaluation of their impact on the fisheries and ecosystems where they will be used should be undertaken. The effects of such gear introductions should be monitored.

12.12 States should investigate and document traditional fisheries knowledge and technologies, in particular those applied to small-scale fisheries, in order to assess their application to sustainable fisheries conservation, management and development.

12.13 States should promote the use of research results as a basis for the setting of management objectives, reference points and performance criteria, as well as for ensuring adequate linkages between applied research and fisheries management.

12.14 States conducting scientific research activities in waters under the jurisdiction of another State should ensure that their vessels comply with the laws and regulations of that State and international law.

12.15 States should promote the adoption of uniform guidelines governing fisheries research conducted on the high seas.

12.16 States should, where appropriate, support the establishment of mechanisms, including, *inter alia*, the adoption of uniform guidelines, to facilitate research at the subregional or regional level and should encourage the sharing of the results of such research with other regions.

12.17 States, either directly or with the support of relevant international organizations, should develop collaborative technical and research programmes to improve understanding of the biology, environment and status of transboundary aquatic stocks.

12.18 States and relevant international organizations should promote and enhance the research capacities of developing countries, *inter alia*, in the areas of data collection and analysis, information, science and technology, human resource development and provision of research facilities, in order for them to participate effectively in the conservation, management and sustainable use of living aquatic resources.

12.19 Competent international organizations should, where appropriate, render technical and financial support to States upon request and when engaged in research investigations aimed at evaluating stocks which have been previously unfished or very lightly fished.

Implementation Plan
for the
Code of Conduct for Responsible Fisheries

National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

July 1997

A. Purpose

This document proposes a plan for implementing the United Nations Food and Agriculture Organization's (FAO) Code of Conduct for Responsible Fisheries (Code). More specifically, this is a National Marine Fisheries Service (NMFS) implementation plan that responds to the Code's provisions in areas of NMFS jurisdiction or major involvement. The action steps in the plan address the key elements of sustainable marine fisheries, including:

- marine fisheries resources;
- resource habitats;
- the users of the resource;
- marine aquaculture; and
- some of the tools that NMFS uses to achieve its objectives and meet its obligations in these areas, especially fisheries science, international agreements, and trade activities.

The NMFS implementation plan is designed to meet or make major and measurable progress toward certain fundamental goals with respect both to the resources and the users of those resources. These long-term goals may be summarized as follows:

(1) healthy wild resources and habitats that support those resources;

(2) a growing, environmentally sound marine aquaculture industry; and

(3) enhanced social and economic benefits to the Nation provided by viable commercial and recreational fishing industries.

Although the Code is an international agreement, this plan deals primarily with its implementation in the domestic marine fisheries of the United States. In that capacity, the provisions of this plan apply to all sectors that use or culture U.S. marine fish resources, including commercial and recreational fishermen, the marine aquaculture industry, and processors and marketers of these resources. In this regard, NMFS notes that approximately 80 percent or more of world fisheries are conducted in waters under the jurisdiction of a coastal state.

Two exceptions to this emphasis on domestic implementation are the sections that deal with the UN fisheries agreements, and trade, which are included because they are either integral parts of the Code or addressed in detail in the Code.

Still, the Code is, by definition, an international agreement, and there are many themes that need to be addressed internationally as well domestically. In fact, NMFS is involved in many initiatives to promote responsible/sustainable fisheries globally. While these activities are not discussed in this document (save the UN agreements and trade), they may be listed:

o support for strengthened regional fishery management organizations (e.g., International Commission for the Conservation of Atlantic Tunas; Northwest Atlantic Fisheries Organization; Central Bering Sea convention);

o application by regional fishery management bodies of provisions of the UN Fish Stocks Agreement;

o support for new international fishery management initiatives (Pacific tuna, turtles, sharks);

o a U.S.-hosted technical experts consultation, to be held in early 1998, on managing fishing capacity;

o dissemination of technical information necessary for making progress toward sustainable fisheries practices (turtles, dolphins, marine mammals, seabirds, and coral reefs); and

o support for international initiatives (consultations, studies, and workshops) dealing with various trade and economic aspects of sustainable fisheries, in the APEC Fisheries Working Group; the OECD Fisheries Committee; the WTO Committee on Trade and the Environment; and the FAO Committee on Fisheries.

Implementation of the Code will be achieved through the marine fisheries activities and policies of NMFS that are provided for in our legislative mandates, especially the October 1996 amendments known as the Sustainable Fisheries Act, and our recently finalized, long-term fisheries strategic plan.

Accordingly, elaboration of this plan proceeds from a fundamental assumption:

> that NMFS, through its legislative mandates, strategic plan and programmatic activities, seeks to achieve practically all the same goals, or at least make significant and measurable progress toward them, as the Code.

Given the domestic focus of this document, the NMFS Code of Conduct implementation plan is tailored to the unique features of U.S. marine fisheries. These needs and characteristics may not be entirely the same as those in other countries that negotiated and adopted the Code. For that reason, other countries may not choose the same action steps as the United States in their Code of Conduct implementation plans. At the same time, it is our hope that this implementation plan will be viewed as a serious, practical, and good faith effort on the part of the U.S. Agency responsible for marine fisheries to implement the Code, and we encourage other countries to do the same.

B. Background -- Code of Conduct for Responsible Fisheries

During the last half dozen years, fisheries experts have become increasingly concerned about the overall state and trends in global marine fisheries. After 1989, world harvests seemed to plateau and irregularly decline; evidence increased that a large share of the traditional and highly priced species were overfished or at least fully harvested; some traditional species suffered major stock declines; signs of excess capacity in the harvesting sector were everywhere; disturbingly high levels of bycatch in the capture fisheries sector caused increasing concerns; and habitat degradation, especially of the coastal environment, became a higher priority issue internationally and in many individual nations.

Fisheries analysts at FAO highlighted these issues through the publication of a series of rather pessimistic forecasts. All these issues and concerns came together in the early 1990s when FAO issued papers in preparation for the Conference on Responsible Fishing at Cancun, Mexico in May 1992. At that meeting, it was agreed in the Cancun Declaration that FAO should sponsor and organize consultations on a code of responsible practice in fisheries, and such a document was negotiated in the following two years, and finalized in September 1995.

The Code is organized in 12 articles, of which 6 address substantive themes; (a) fisheries management; (b) fishing operations; (c) aquaculture development; (d) coastal area management; (e) post-harvest practices and trade; and (f) fisheries research.

Two international themes that are discussed at length in the Code are: first, two UN fisheries agreements, and, second, a number of trade issues. The UN fisheries agreements deal with the regulation of highseas fishing vessels (the Compliance Agreement) and with the management of fisheries for highly migratory fish stocks and straddling fish stocks (the Fish Stocks Agreement). The Compliance Agreement is in fact an integral part of the Code, while the Fish Stocks Agreement includes much of the same language as the Code.

The second broad international theme -- trade issues -- is an objective that NMFS, in cooperation with the U.S. trade agencies, has pursued in the past and continues to promote in a number of international fora.

C. Method

The Code is a wide-ranging, comprehensive document that addresses all aspects of fisheries issues. Therefore, its scope includes marine and freshwater fisheries; wild and farmed resources; and harvesting and post-harvest operations. With respect to marine fisheries, the Code addresses most, if not all, of the chief mission areas of NMFS. The only major NMFS programmatic activity that is not addressed in a separate, detailed article is protected resources.

Before we discuss the specifics of a Code implementation plan, the overall NMFS record on marine fisheries issues must be placed in a broader and historical context. During the last two decades since the passage of our basic fisheries law, the United States has made appreciable progress in dealing with these issues, much of it based on the same fundamental principles that were later included in the Code. Since 1976, when the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was passed and implemented, the United States Government has:

o established a 200-mile fishery conservation zone, later modified and expanded as an exclusive economic zone (EEZ);

o created an entirely new fisheries management system, based on species-specific fishery management plans that are developed cooperatively by the Department of Commerce and the eight Regional Fishery Management Councils (Councils), the majority of which plans use total catch limits;

o developed 39 Fishery Management Plans (FMP), the majority of which are effectively "multispecies" plans, that collectively govern about three-quarters of all fisheries in the U.S. EEZ;

o begun to implement various types of limited entry systems in many of our major commercial fisheries;

o initiated efforts to understand and then better manage the levels of capacity in the harvesting sector of the U.S. commercial fishing industry;

o developed definitions of overfishing for U.S. fisheries; and

o implemented a variety of management measures to estimate and reduce bycatch.

In summary, important progress has been made in the last two decades in many of the substantive areas addressed in the Code. At the same time, it is clear that much needs to be done to strengthen the sustainability of our marine fisheries. In preparing this implementation plan, NMFS has reviewed its marine fisheries strategies and legislative mandates, and prepared a forward-looking document to address its missions in these areas.

NMFS has recently completed a review of its programmatic priorities through a planning process that involves both internal U.S. Government review and comment by all interested constituencies. The Fisheries Strategic Plan was finalized in April 1997 and is designed to guide the Agency's major programmatic missions for the next 5 years.

The Fisheries Strategic Plan is organized around three programmatic areas: (1) sustainable fisheries; (2) recovered protected species; and (3) healthy living marine resource habitat. The first (sustainable fisheries) and third (healthy coasts) objectives deal with most of the specific issues addressed in the Code, while the second objective (recovered protected species) is included in the Code as a management objective, but is not treated in the same detail as in the Fisheries Strategic Plan. Therefore, protected species issues are addressed briefly in the sections dealing with bycatch, fish habitats, fisheries science, and trade.

The Fisheries Strategic Plan is the NMFS long-term plan. However, to reach or make meaningful progress toward its objectives, NMFS has to carry out a wide range of specific, mainly research and regulatory activities. Most of these activities are undertaken pursuant to our fisheries management responsibilities, as specified in the Magnuson-Stevens Act, which is periodically updated, or reauthorized, by the U.S. Congress. This reauthorization process last took place in October 1996 with the passage of the Sustainable Fisheries Act.

Finally, NMFS is engaged in international activities in the areas of international fisheries agreements and trade, in cooperation with the Department of State and the U.S. trade agencies, that deal with issues that are taken up in the Code.

In summary, in preparing the implementation plan, we have emphasized the following:

(1) the requirements of the Sustainable Fisheries Act;

(2) the NOAA/NMFS Fisheries Strategic Plan; and

(3) selected international activities that NMFS carries out in coordination with other U.S. Government agencies.

An examination of the above three items and the Code points to nine cross-cutting themes that constitute the body of the NMFS Code of Conduct implementation plan. We may represent schematically the relationship between, on the one hand, NMFS strategic planning, legislative mandates, and programmatic activities, and, on the other, the major areas addressed in the Code of Conduct in the table below:

THEMES

	NMFS	Code of Conduct
1.	Healthy Fish Stocks	Fisheries Management Fishing Operations
2.	Overfished Stocks	" "
3.	Overcapitalization	" "
4.	Bycatch	" "
5.	Marine Aquaculture	Aquaculture Development
6.	Fish Habitats	Coastal Area Management
7.	Fisheries Science	Fisheries Research
8.	UN Fisheries Agreements	Compliance Agreement is explicitly included; Fish Stocks Agreement is implicitly
9.	Trade	Post-Harvest Practices and Trade

D. Themes

1. Healthy Fish Stocks

One of three fundamental goals of the Strategic Plan is sustainable fisheries. This same theme runs throughout the Sustainable Fisheries Act of 1996 (Magnuson-Stevens Act amendments), as the name of the law indicates. The United States defines a "sustainable fishery" as one in which the rate or level of fishing mortality does not jeopardize the capacity of the fishery to produce the maximum sustainable yield on a continuing basis. In effect, the sustainable fisheries theme captures most of the "responsible fisheries" principles developed in Code Articles 6, 7 and 8 dealing with "general principles", "fisheries management," and "fishing operations."

Under the sustainable fisheries strategic goal, two key and related objectives are: maintaining healthy fish stocks and rebuilding overfished stocks.

Maintaining healthy fish stocks involves the entire NMFS fisheries management mission. Of the 201 fish stocks falling under the purview of NMFS, scientific information is sufficient for nearly 80 percent (158 stocks) to classify the current level of stock abundance relative to the level that would produce the maximum sustainable yield (MSY). Of these 158 stocks, 85, or more than half, are at or above this level and may therefore be termed "healthy", while 73, or slightly less than half are currently below the levels that would produce MSY. Information is insufficient for 43 (21 percent) of the 201 stocks with respect to the stock size levels needed to produce MSY, although the current abundance of most of these 43 stocks is low.

The long-term (5-year) plan is to maintain healthy stocks that allow MSY on a continuing basis, and to reduce the level of statistical uncertainty associated with estimates of stock status and biological potential for all stocks. Obviously, the above goals apply both to established and to currently underutilized fisheries for stocks that are biologically healthy.

2. Overfished Stocks

The second broad sustainable fisheries objective -- rebuilding overfished stocks -- presents a greater challenge. The United States defines overfishing as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce MSY on a continuing basis. There are currently 73 fish stocks, about one-third of all stocks under NMFS jurisdiction and almost one-half about which we have adequate scientific stock information, that are overfished.

The Strategic Plan calls for eliminating overfishing of these stocks in the next 5 years, and ensuring that they are rebuilt according to rebuilding schedules that specify a completion date within 10 years, unless the biology of the stock or other environmental conditions dictate otherwise. Accordingly, the Sustainable Fisheries Act adds the key phrases: "... and rebuild overfished stocks" to its basic management objectives and "specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished," to the action steps to be taken in respect to overfished stocks.

To strengthen coordination between the Executive Branch and Congress on this issue, the Sustainable Fisheries Act has also instructed the Secretary of Commerce (on behalf of NMFS) to report annually to the Congress on the status of fisheries under U.S. jurisdiction and "... those fisheries that are overfished or are approaching a condition of being overfished."

The United States Government will address this problem constructively and in a timely manner. In the event that a stock is overfished, the Sustainable Fisheries Act mandates that the appropriate Council develop a plan within 1 year to end it, and, if that does not happen, the Secretary of Commerce will prepare a plan to eliminate overfishing.

In summary, the rebuilding of overfished stocks is both an objective of the Executive Branch and a long-term legislative mandate. Clearly, eliminating overfishing is a serious objective.

There are a number of potential measures available to help reduce and eventually eliminate overfishing, including (in no order of priority):

o limited entry systems, of which examples are license limitations and moratoria, and individual fishing quotas (IFQ);

o scientifically based and rigorously enforced total allowable catch (TAC) limits; and

o vessel and license buyback programs.

It should be noted that some of these measures deal with both overfishing, the subject of this part (Section 2) of the Code of Conduct implementation plan, and with overcapitalization, the subject of the next part (Section 3). More precisely, limited entry and vessel/license buyback programs address both overfishing and overcapitalization.

Limited Entry Systems

Limited entry systems refer to a number of arrangements that have the effect of reducing the "open access" feature of traditional fisheries. In recent years, NMFS, the Councils, and industry have made appreciable progress in introducing elements of limited access in fisheries in many parts of the U.S. EEZ. The Sustainable Fisheries Act seeks to improve the effectiveness of limited entry systems in several ways. These are discussed later in this implementation plan in Section 3 on overcapitalization.

One type of limited entry system is an IFQ. NMFS has worked with Councils and industry groups to plan and implement three individual fishing quota (IFQ) programs in the (1) sablefish and halibut; (2) surf clam and ocean quahog; and (3) wreckfish fisheries. IFQs support NMFS efforts to reduce overfishing and overcapitalization because IFQs tend to lead both to a reduction in the number of participants in a fishery and to a reduction in the incentive to increase the capacity of each vessel.

However, IFQs have been in place for a short period of time in a few fisheries, and there are enough questions about them that the Sustainable Fisheries Act has added a moratorium on new IFQs for 4 years, until October 1, 2000. In the meantime, the National Academy of Sciences (NAS) has been designated by Congress to conduct a study of IFQs and assess their effectiveness in addressing the problems of fishing effort and excess capacity. NAS will report on its findings by October 1, 1998.

TAC-Based Management

NMFS will continue to develop science-based TACs in many of the fisheries under its jurisdiction, and enforce those catch limits to the best of its and the Coast Guard's enforcement capability. Obviously, fisheries science plays a key role, and the strategic planning priorities of NMFS with respect to fisheries science are spelled out in Section 7.

License and Vessel Buyback Programs

These programs will control fishing effort, but NMFS believes it is more appropriate to discuss them in the next part of our Code implementation plan -- Section 3 -- on overcapitalization.

3. Overcapitalization

Overcapitalization in the fisheries harvesting sector is a major obstacle to progress toward sustainable fisheries, and the Strategic Plan and the Sustainable Fisheries Act both address this problem. Overcapitalization and overfishing are not the same thing, but they are related. Overcapitalization refers here to vessels and gear, or, generally, to investments in catching power, or capacity. Overfishing, on the other hand, includes the use to which the vessels and gear are put, or, stated otherwise, to an excessive rate of harvesting operations. Overcapitalization will tend to lead to overfishing unless there is a strict management regime in place. Therefore, we may say that overcapitalization, or excess capacity, has the potential to create overfishing. The excess capacity issue is an important theme in the Code, especially in Articles 6 and 7.

One of the basic objectives of the Strategic Plan is to "increase long-term economic and social benefits to the nation from living marine resources," with one of the performance measures being to "reduce the number of overcapitalized fisheries and mitigate the impacts of these reductions on fishing communities". Toward this end, one of the strategies that will be employed is to explore the use of all available tools, including the appropriate use of vessel and permit reduction programs where needed, to reduce fishing capacity in overcapitalized fisheries."

The Sustainable Fisheries Act directs the Executive Branch to deal more effectively with this complicated issue in a number of ways:

First, the Sustainable Fisheries Act mandates that the Secretary of Commerce form a "task force of interested parties" to study the U.S. Government's role in creating the problem. Accordingly, the task force shall study and report to Congress within 2 years, i.e., by October 1998, "... on the role of the Federal Government in (1) subsidizing the expansion and contraction of fishing capacity in the fishing fleets" that operate in the U.S. EEZ, and (2) otherwise influencing the aggregate capital investments in fisheries."

Second, the Act prohibits the Federal Government -- until October 1, 2001 -- from guaranteeing new loans "... for the construction of new fishing vessels if the construction will result in an increased harvesting capacity within the U.S. EEZ.". This prohibition formalizes and extends the Government's existing policy on loan guarantees.

Third, the Act proposes the creation of a Standardized Fishing Vessel Registration and Information management system on a national and regional basis, which system could be used to monitor levels of capitalization in U.S. commercial fisheries.

NMFS has already taken steps to begin to deal with this difficult issue both domestically and internationally.

In the domestic sphere, NMFS has taken the initial steps to deal more effectively with excess capacity and permit issues in selected Northeast and Pacific Northwest fisheries. In 1995, NMFS spent $2 million on a pilot-test vessel buyback program in the Northeast, and withdrew 11 groundfish and scallop vessels. In 1996, the Congress appropriated $23 million for this program, and NMFS expects that this funding level will be sufficient to remove an additional 75-80 vessels from the target fisheries.

NMFS has also implemented for two years a program to reduce salmon fishing licenses in the Pacific Northwest. In these two years, NMFS has spent $9.2 million to buy back almost 440 salmon troll, gill net, and charterboat licenses, approximately one-third of the ocean salmon licenses in Washington State.

The Sustainable Fisheries Act strengthens the Administration's tools for dealing in the future with excess fishing capacity. Most significantly, a Fishing Capacity Reduction Program will be established in the Department of Commerce that the Secretary may use to conduct a capacity reduction program in order to: (1) prevent or end overfishing; (2) rebuild stocks of fish; and/or (3) achieve measurable improvements in conservation."

The objective of this provision of the Sustainable Fisheries Act is "... to obtain the maximum sustainable reduction in fishing capacity at the least cost and in a minimum period of time." As explained above, the two available capacity reduction tools are: vessel or permit buyback programs.

Under the Fishing Capacity Reduction Program, funding for vessel buybacks and permit removals will be obtained from the following:

- the Saltonstall-Kennedy fund;
- Congressional appropriations;
- industry fees; and
- State, other public or non-profit sources.

The proposed use of industry fees to help fund a fishing capacity reduction program is new. Under the Sustainable Fisheries Act, the fees must be approved by 2/3 of participants in a referendum, and may not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the capacity reduction program was established.

In addition, the Sustainable Fisheries Act gives the Executive Branch a valuable means that can be used to make these capacity reduction funds operate more effectively. Specifically, the Act directs the creation of a Capacity Reduction and Financing Authority that may be used to guarantee debt obligations of sums borrowed pursuant to fishing capacity reduction fund programs. Under the terms of the Act, these debts may not exceed $100 million per program; the maturities may not be longer than 20 years; and, most significantly, the debts will be repaid by fees paid by industry participants in the capacity reduction program. Industry will become a partner with Government in a cooperative effort to reduce excess capacity in the fisheries sector.

Whatever the extent to which the above programs are utilized in coming years to deal with this problem, it is clear that the Congress and Administration are determined to achieve meaningful results. During the next 5 years, NMFS will reduce the number of overcapitalized fisheries and mitigate the impacts of these reductions on fishing communities. Obviously, to achieve these objectives, NMFS will be working increasingly closely with the Councils and directly with industry on de-capitalization for many years to come.

The overcapitalization issue also has international dimensions:

NMFS and FAO have agreed to co-sponsor an international meeting and technical workshop, to take place in La Jolla, California, in February 1998, to discuss the excess capacity issue. This technical consultation will review definitions of capacity, methods of measuring it, and the means used by Governments to control or manage it.

It is expected that NMFS will then form a national task force to begin the tasks of (1) assessing the excess capacity problem; (2) determining viable solutions; and (3) assigning realistic timetables for their implementation.

4. Bycatch

It is increasingly recognized both in the United States and internationally that bycatch can impede efforts to achieve sustainable fisheries in two ways:

o First, it increases the uncertainty concerning total fishing mortality which in turns makes it more difficult to assess the status of stocks, to set the appropriate levels of optimum yield (OY) and overfishing (OF), and to ensure that the OYs are attained and that the OF levels are not exceeded.

o Second, bycatch often precludes other more productive uses of fishery resources.

The Sustainable Fisheries Act added a National Standard for bycatch which states that conservation and management measures shall, to the extent practicable, minimize bycatch and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. Accordingly, NMFS will establish a standardized reporting methodology to assess the amount and type of bycatch occurring in each fishery covered by an FMP.

Once bycatch guidelines are developed and formally approved, they will be incorporated, as appropriate, in individual FMPs. Since the bycatch and discards issue varies dramatically from fishery to fishery, these guidelines will have widely varying impacts on different fisheries.

The bycatch issue has both domestic and international components:

In the domestic sphere, NMFS needs a better, science-based understanding of the matter, and must direct increased efforts at developing the fishery management measures and technological improvements that can mitigate the problem.

In some traditional fisheries, very high levels of bycatch are known to have taken place for many years. A good example is the shrimp trawl fishery in the Gulf of Mexico. The Sustainable Fisheries Act directs the Secretary of Commerce and two appropriate Councils to "assess the impact on fishery resources of incidental harvests by the shrimp trawl fishery".

In addition, the Sustainable Fisheries Act mandates the Secretary of Commerce to complete a program to: (1) develop technologies to minimize the incidental mortality of bycatch in the shrimp trawl fishery; (2) evaluate ecological impacts and benefits of said technology; and (3) submit a report on the above to the Congress.

Substantial progress in addressing the bycatch problem will require the following: (1) better information concerning the levels of bycatch, and the biological, ecological, social, and economic effects of bycatch; (2) better information concerning the biological, ecological, oceanographic, social and economic factors that affect the levels of bycatch; and (3) a better integration and use of such information. The Strategic Plan commits NMFS, in partnership with other management entities, the fishing industry, the academic community, and conservation groups, to make improvements to each of these three requirements.

The bycatch issue also involves several domestic fisheries in the incidental capture and mortality of protected resources. These involve the capture of cetaceans, pinnipeds, sea turtles and sea birds in trap, gill net, and trawl fisheries. NMFS is working to reduce or eliminate bycatch through use of appropriate technologies, such as turtle excluder devices (TED) or modification of fishing gear and fishing practices. This is already occurring in the case of sea turtle bycatch in the shrimp trawl fishery where NMFS requires the use of TEDS in its domestic fishery and is transferring this technology to other nations.

In addition, NMFS continues to work with nations fishing for tuna in the Eastern Tropical Pacific Ocean to develop methods to reduce the take of dolphins and to monitor incidental capture in the tuna purse seine fishery. As other solutions are developed, NMFS will share them with interested nations.

The bycatch/discard issue also has important international ramifications that the United States will address. Under the Sustainable Fisheries Act, the Secretary of State, in cooperation with the Secretary of Commerce (and the technical support of NMFS), "shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen" for appropriate fisheries.

5. Marine Aquaculture

Marine aquaculture is the propagation and rearing of aquatic organisms in controlled or selected environments for commercial, recreational, or public purposes. Such organisms are raised primarily to supply seafood for human consumption, but they can also be used to enhance wild fish stocks, for bait production, in fish culture for zoos and aquaria, and for rebuilding of populations of threatened and endangered species.

U.S. demand for seafood is expected to increase by 1.4 million tons annually by the year 2000 due to population growth alone. Aquaculture can help to meet this demand by aiding the rebuilding of wild stocks, thus increasing the yield from their harvest, and by supplementing this harvest with additional seafood products. While marine aquaculture is not a substitute for wise management of wild fish stock fisheries, it is a vital tool for meeting the growing demand for seafood in the next century, and will play a significant role in the future of NMFS.

Worldwide, aquaculture is growing rapidly and accounts for an increasing share of food fish supplies. In the United States, however, domestic aquaculture supplies only 5.9 percent of total seafood needs, compared to 17 percent worldwide. In this sense, the aquaculture in the United States is just in its infancy.

More recently, the FAO World Food Summit, held in December 1996, endorsed the Rome Declaration on World Food Security and a Plan of Action that highlight the world's growing food needs. Clearly, aquaculture is an increasingly important source of food fish supplies, and was so recognized in the World Food Summit. FAO reports that production of seafood products for human consumption must increase by approximately 20 million tons, or 28 percent, over the 1993 level in order to maintain present per capita fish consumption levels.

The World Food Summit Plan of Action included, in the action steps that Governments and industry should undertake, a non-binding obligation to:

> "promote development of environmentally sound and sustainable aquaculture (that is) well integrated into rural, agricultural, and coastal development"

Similarly, the Code deals with aquaculture in detail in Article 9 ("Aquaculture Development"), and stresses the need for increased global production of food fish from environmentally sound aquaculture operations.

NMFS supports all the FAO goals agreed to at the World Food Summit and in the Code.

Through scientific research and technology development, NMFS can play a significant role in the development of robust and environmentally sound marine aquaculture. Research in such areas as siting, species selection, disease control, and others can contribute to the growth of U.S. marine aquaculture. It can also help mitigate the potential detrimental effects of marine aquaculture on marine ecosystems and on the genetic integrity of wild stocks.

In the next five years, NMFS will:

o promote the commercial rearing of at least seven new species;

o reduce the time and cost of permitting environmentally sound marine aquaculture ventures;

o provide financial assistance for environmentally sound marine aquaculture ventures;

o identify areas in the U.S. EEZ suitable for environmentally sound marine aquaculture development; and

o develop and implement environmentally sound marine aquaculture technologies and practices.

This NMFS strategy will be implemented in cooperation with other U.S. agencies involved in aquaculture policies and programs. The overall U.S. aquaculture planning and coordination mechanism is the Joint Subcommittee on Aquaculture (JSA), including the Departments of Agriculture, Interior, and Commerce (NMFS). NMFS has worked on aquaculture plans within the JSA context for more than a decade, and will continue to do so. The JSA is expected to issue a U.S. aquaculture development plan in the near future.

6. Fish Habitats

The vital role of healthy habitats in making sustainable fisheries possible has received increasing attention in recent years, and the habitat issue is featured as an objective in the Strategic Plan. The same issue, "integration of fisheries into coastal area management", is treated in Article 10 of the Code of Conduct.

The Strategic Plan calls for a long-term goal of no net loss of living marine resource habitats:

o where habitats are still healthy, NMFS will use its influence with the State and other Federal agencies to prevent their degradation;

o where habitat loss has already occurred, NMFS will work to restore the habitats; and

o where coastal areas were previously unavailable or inadequate for use by living marine resources (LMR), NMFS will seek, where appropriate, to create habitats that are available to and may be used by LMRs.

Over the next 5 years, NMFS expects to begin to make meaningful and measurable progress toward the above long-term goals. Habitat loss should be reduced to insignificant levels, and NMFS efforts to restore and create new habitats shall have begun in earnest, with the twin goals of offsetting unavoidable human-caused losses and moving toward no net loss on a national level.

Habitat considerations shall form an integral part of the entire fisheries management process. Accordingly, in the Sustainable Fisheries Act, the Secretary of Commerce, on behalf of NMFS:

o shall establish "... guidelines to assist the Councils in the description and identification of essential fish habitats in fishery management plans ...;" and

o in response to actions by any other Federal or State agency that would adversely affect essential fish habitats, shall recommend to such agency measures to conserve such habitat.

Habitat programs will be driven by a wide range of scientific, technical, and regulatory action steps. NMFS must identify vital fish habitats; establish an inventory of LMR habitats; and monitor trends in habitat availability. With this information, NMFS can effectively meet its regulatory responsibilities, mainly in partnership with other U.S. government agencies, such as the U.S. Army Corps of Engineers, the Federal Energy Regulatory Commission, and various State agencies.

- implement a NOAA research vessel replacement plan;
- develop new science-based resource assessment and management techniques;
- improve its data collection and analysis techniques and systems;
- improve its fishery management data systems;
- increase its ability to incorporate economic and social factors into decision-making;
- increase its ability to predict natural living marine resource variations;
- provide a core fishery statistics program based on strategic and operational needs;
- involve constituents in research programs;
- provide a forum for answering questions and educating user groups on how research is conducted;
- develop a new series of reports and presentations to communicate scientific results in simplified language;
- require various fisheries grant programs to solicit input from external scientists; and
- participate in international scientific initiatives.

8. UN Fisheries Agreements

Two recently negotiated UN international fisheries agreements are closely associated with the Code of Conduct: first, the Compliance Agreement, which the United States largely initiated, which is an integral part of the Code of Conduct; and, secondly, the UN Fish Stocks Agreement, much of whose language is the same as in appropriate parts of the Code of Conduct.

Fundamentally, these two UN agreements embody a growing international consensus on the need to manage more effectively fisheries resources that do not dwell exclusively in waters under the jurisdiction of one coastal state. Particularly important from the U.S. point of view is the fact that these agreements incorporate for the first time the precautionary approach.

7. Fisheries Science

Sound science is the foundation for the design and implementation of effective approaches in all the policy areas reviewed in this plan. It is critical that NMFS have the best available scientific information on the following: (1) the status of fisheries populations; (2) the changes in their status which will occur over time as the result of environmental changes, fisheries exploitation, and any other natural and human factors that affect them and their habitats; and (3) the benefits that these fisheries will provide to the Nation under alternative harvest and management strategies.

The need for the best available science is uncontested, and this priority is treated as a separate objective in the Strategic Plan and discussed in Article 12 of the Code.

The critical role of fisheries science in all aspects of the NMFS mission is underlined in the Strategic Plan's Vision. "Credible high-quality science" will support the full range of the NMFS mission and serve to minimize risks in management decision-making.

Reliable, up-to-date, and accurate scientific information is required for fisheries whether the stocks on which they are dependent are considered to be healthy, overfished, or of uncertain status. For the healthy stocks, the information is vital to ensure that NMFS can continue to manage them on a sustainable basis; for the overfished stocks, the information is a necessary foundation for the rebuilding plans; and for the stocks of unknown status, NMFS is committed to reducing the uncertainty (in conformity with the Code of Conduct's precautionary approach). Whatever the status of the stock, science is the best means for developing quantitatively measurable yardsticks for managing the resources under the jurisdiction of NMFS, another key theme in the Strategic Plan.

Ensuring the highest quality fisheries science requires attracting a world-class scientific staff, maintaining state of the art data collection/analysis capability, and supporting long-term research programs.

During the next 5 years, NMFS will:

- expand and improve its system of peer review;

- improve its professional standards for research and scientific advice;

- implement policies for ensuring the integrity and independence of science;

Compliance Agreement

s UN agreement was negotiated mainly to prevent the cumvention of international fisheries regulations by "re- gging" vessels under the flags of States that are unable or illing to enforce such measures. As such, the Compliance eement, when ratified and enforced, will close one of the last or loopholes to sound international fisheries management.

United States is implementing the Compliance Agreement in the m of the High Seas Fishing Compliance Act of 1995. President nton signed the Act in November 1995, and the United States ediately took steps to begin its domestic implementation. The pliance Agreement will come into force when it is accepted by signatories, and, thus far (June 1997), nine nations cluding the United States) have accepted.

major U.S. responsibility that flows from this agreement is obligation to license and control all U.S.-flag fishing sels that operate on the high seas. Under the Compliance eement and the enabling U.S. legislation, these vessels must eive appropriate permission to operate in these fisheries. To e, under the High Seas Fishing Compliance Act, NMFS has roved licenses for about 750 U.S. fishing vessels in a number Atlantic and Pacific Ocean fisheries.

Fish Stocks Agreement

United States signed in December 1995 and later ratified the Fish Stocks Agreement, a separate arrangement that implements visions of the UN Convention on the Law of the Sea relating to conservation and management of straddling and highly ratory fish stocks. NMFS and the Department of State have ided to implement its provisions as soon as possible and ropriate in various international fisheries management anizations and arrangements, and to urge other countries whose ionals are involved in fisheries for straddling and highly ratory fish stocks to do the same.

s far (June 1997), 13 signatories to the UN Fish Stocks eement (including the United States) have ratified it, and a al of 30 countries must ratify for the agreement to enter into ce.

major elements of the UN Fish Stocks Agreement -- the cautionary approach; transparency; conservation and management nciples; fishing by non-members; compliance and enforcement; l provisions dealing with new members of international servation regimes -- are the same as in the Code of Conduct.

The United States has prepared a report that addresses the implementation of provisions of the UN Fish Stocks Agreement in certain regional international fishery organizations, and distributed this report to a large number of governments and to five such regional fisheries management organizations. These organizations are: (1) International Convention for the Conservation of Atlantic Tunas; (2) Northwest Atlantic Fisheries Organization; (3) Inter-American Tropical Tuna Commission; (4) Central Bering Sea (Donut Hole) Agreement; and (5) Convention on the Conservation of Antarctic Marine Living Resources.

The United States believes that Members of regional international fisheries management organizations will eventually have to implement still other provisions of the UN agreements, including those relating to dispute settlement, data collection, by-catch reduction, excess fishing capacity, and the open access problems for fisheries on the high seas. These latter items are all implicitly or explicitly included in the Code.

9. Trade

Article 11 of the Code of Conduct deals with "post-harvest practices and trade". As the title suggests, much of Article 11 does not deal with trade rules or principles in the strict sense, but with a wide variety of "post-harvest practices".

The Code's provisions on "post-harvest practices" include guidelines on a number of issues, e.g., (1) reduction of post-harvest losses and waste; (2) increased human consumption use of the resource; (3) conformity with sustainable development; and (4) the free exercise of consumer choices.

It should be noted at the outset that the United States made the following statement for the record regarding those provisions of Article 11 that address WTO rules and principles:

> "With respect to the trade-related provisions of the Code, the United States understands that these are not intended to add to or diminish the rights and obligations of WTO Members under the WTO Agreement. The United States views this language as a loose paraphrase of the WTO Agreement. Furthermore, since there is some possibility of inconsistency between the trade-related language of the Code and obligations under the WTO Agreement, the United States understands that the Code intends the language of the WTO Agreement to be dispositive. Furthermore, since the Code is intended to paraphrase the WTO Agreement, and since the WTO Agreement is much more detailed, the United States is of the opinion that there is no need for the elaboration of technical guidelines by the FAO Secretariat for the trade-related provisions of the Code."

Some of the trade issues addressed in Article 11 do involve formal trade rules and principles that are embodied in the various World Trade Organization (WTO) agreements. The most important of the Code's trade-related provisions that are already addressed in the WTO Agreements are: (1) trade liberalization; (2) product safety and health; and (3) the WTO consistency of trade measures implemented for conservation purposes.

o Trade Liberalization

While it is not a trade agency, NMFS has consistently promoted the liberalization of trade in fisheries products and will continue to do so in the future. This generic activity is undertaken by NMFS in cooperation with the U.S. trade agencies, in particular, the Office of the United States Trade Representative (USTR) and the Department of Commerce's International Trade Administration.

NMFS has actively promoted trade liberalization in fisheries products in a variety of multilateral and other fora.

First and foremost, it should be noted that NMFS supported trade liberalization in fisheries products over a period of several years in the recently completed Uruguay Round (UR) and the North America Free Trade Agreement (NAFTA). In the UR negotiations, in particular, the original U.S. goals were to achieve the most comprehensive possible liberalization of trade in the fisheries sector, including tariffs and non-tariff measures, assistance programs, and trade-related aspects of safety and health regulations. When the next trade round takes place under the WTO, the United States is certain to be in the vanguard of countries urging comprehensive liberalization in the fisheries sector.

Multilateral trade negotiations have already yielded significant economic benefits for both developing and developed countries, and the United States has one of the lowest levels of average tariff protection in the fisheries sector.

Since the conclusion of the UR and NAFTA, NMFS has continued to press for the reduction of fisheries sector trade barriers in a host of other international fora. As examples, NMFS has:

-- sought to reduce tariff and/or non-tariff barriers in a range of fisheries trade bilaterals with countries like Japan, the European Union, Canada, Australia, and the Philippines;

-- proposed long-term fisheries trade and investment liberalization studies in the Fisheries Working Group of the Asia Pacific Economic Cooperation forum;

-- supported trade liberalization in both the Organization for Economic Cooperation and Development's Committee for Fisheries and the UN FAO Committee on Fisheries Subcommittee on Trade; and

-- urged fisheries trade liberalization in the course of China's application for membership in the WTO.

The overall point is simple: The United States has consistently played a strong role in supporting negotiations leading to reductions in both U.S. and foreign trade barriers in the fisheries sector, and will continue to do so in the future.

o Product Safety and Health

The United States is a signatory of the WTO Agreement on Sanitary and Phytosanitary Measures, and fully supports its implementation domestically and internationally.

As a matter of fact, the U.S. Government agencies responsible for seafood product safety, the Food and Drug Administration (FDA) and NMFS, have been engaged in recent years in converting the domestic regulatory system to a new regime based on Hazard Analysis Critical Control Point (HACCP) principles, and providing training to foreign Governments on the HACCP-based approach. In addition, FDA and NMFS are active participants in the FAO's Codex Alimentarius, a standards-setting organization that provides the necessary technical expertise and assistance in moving toward equivalency of standards in this area.

o WTO Consistency of Trade Policies and Measures

The Code of Conduct also addresses generally the consistency between measures affecting fisheries trade and WTO trade rules. As a practical matter, NMFS participates in many international organizations that deal with fishery conservation and protected species issues, and, in some instances, these organizations authorize the use of certain trade measures. An example of a fishery conservation body that now endorses the use of a trade measure is the International Commission for the Conservation of Atlantic Tunas; an example of an international body that deals with protected species issues and is in fact a trade agreement is the Convention on International Trade in Endangered Species.

Trade measures intended to support international fishery conservation and protected species objectives are implemented through domestic legislation, and a number of U.S. laws authorize and/or mandate the use of such trade measures. Examples include the Pelly Amendment to the Fishermen's Protective Act of 1967, the Marine Mammal Protection Act, and the Endangered Species Act.

The Code of Conduct's provisions on trade policy matters clearly subordinate the Code to the WTO. Article 2 (h) (Objectives of the Code) advises that the objectives are, among other things, to:

o "promote the trade of fish and fish products in conformity with relevant international rules and avoid the use of measures that constitute hidden barriers to trade".

And in Article 11 (Post-Harvest Practices and Trade), the Code urges that:

o "measures affecting international trade in fish and fishery products ... are in accordance with internationally agreed rules," (11.2.3);

o "fish trade measures ... should be in accordance with internationally agreed trade rules, in particular the principles, rights and obligations, established in the Agreement on ... Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade" (11.2.4);

o "States should cooperate to develop internationally acceptable rules or standards for trade in fish and fishery products in accordance with the principles, rights, and obligations established in the WTO Agreement" (11.2.13);

o "States should cooperate with each other and actively participate in relevant regional and multilateral fora, such as the WTO, in order to ensure equitable , non-discriminatory trade in fish and fishery products ..." (11.2.14); and

o "States should promptly notify ... WTO and other appropriate international organizations on the development of and changes in laws, regulations, and administrative procedures applicable to international trade in fish and fishery products." (11.3.8)

In fact, many of the WTO "rules" and "principles, rights and obligations" referred to in Article 11 are commonly accepted and reasonably free of major controversy. Examples are: transparency; equity; non-discrimination; notification; and the preference for measures based on the best available science.

However, certain other issues relating to WTO rules, principles, rights, and obligations are more complicated. Among the most complex of these issues are (1) the use of trade measures pursuant to a conservation objective outside the jurisdiction of the country applying the trade measure, and (2) measures provided for in domestic legislation but not in the appropriate international conservation body.

Noting these and other difficult issues, the Contracting Parties of the newly created WTO established a Committee on Trade and Environment (CTE) at the close of the UR negotiations in 1994, and asked it to hold consultations for two years on these issues. The CTE completed its report to the WTO in late 1996, and this document represents the most comprehensive statement of the current views of WTO Contracting Parties on the "principles, rights, and obligations" on these issues.

There is undeniably an emerging consensus that "unilateral" actions in this area should be avoided. At the same time, the Code of Conduct does not explicitly address all of these contentious issues, and the CTE Report does not resolve all of them. As the CTE Report states, it is not entirely clear what WTO rules apply, and in what circumstances, to "internationally agreed" trade measures.

More precisely, it is still difficult to discern whether the need for international agreement extends both to the conservation and trade measures, or simply to the trade measure. And, as noted in the CTE Report (Conclusions and Recommendations; para. 174), "trade measures have been included in a relatively small number of multilateral environmental agreements."

NMFS supports the emerging general consensus on the need to obtain international agreement, and believes that evolving U.S. practices are moving in that direction. Environmentally motivated trade measures should be developed and implemented multilaterally, if possible. In the last few years, NMFS has initiated and cooperated with a number of efforts to "multilateralize" these issues. Examples include the recent adoption by the International Commission for the Conservation of Atlantic Tunas of a process leading potentially to trade measures to promote conservation of bluefin tuna and swordfish, and separate efforts to develop international arrangements for the conservation of turtles and dolphins.

At the same time, NMFS is charged with the administration of provisions of various U.S. fisheries conservation laws that others may perceive as "unilateral". In cases where there is an internationally agreed conservation standard, the WTO does not appear to preclude any use of trade measures implemented in support of that standard. In the case of statutes that mandate, rather than simply authorize, trade measures, NMFS is clearly obligated to provide the technical support required to implement these laws.

Clarification of these complex issues will require additional work by both trade and environmental experts, and cooperation between the WTO and other international organizations charged with environmental responsibilities. The CTE Report stresses repeatedly that this sort of collaboration will be necessary to reach agreement on a complete set of rules that apply to environmentally motivated trade measures. It may be noted that the CTE has reconvened in May 1997 to begin the second round of discussions on these kinds of issues. Naturally, NMFS will continue to work with other relevant U.S. Agencies to assist and promote such a constructive dialogue between the trade and international environmental organizations.

E. Implementation Steps

The NMFS plan to implement the Code of Conduct for Responsible Fisheries reflects and conforms with our legal mandates in the Magnuson-Stevens Act, especially the amendments passed in October 1996, contained in the Sustainable Fisheries Act, and with the guidance developed internally in the course of elaborating the fisheries strategic plan.

Obviously, to reach these mandated objectives, NMFS will have to work closely with all of its constituencies, in particular with the Councils. Specific implementation steps will vary significantly from fishery to fishery, region to region, and, therefore, from Council to Council. The key roles that the Councils play are to develop the fishery management plans, and generally to interact with all the constituencies and user groups interested in that plan.

To make the best choices, NMFS will take into account input and suggestions from commercial fishermen, processors, marketers and other commercial sectors, including the marine aquaculture industry, and from recreational fishermen and environmental organizations and Tribal, State and local government agencies and entities. Accordingly, NMFS welcomes specific suggestions and proposals from any of the above constituencies on how to move forward with any elements of this implementation plan.

In the international arena, NMFS will work with all federal agencies, including the Departments of State, Commerce, Interior, Defense, and Agriculture and the Office of the U.S. Trade Representative, and with foreign Governments, and with the various regional commissions that are involved in the management of international fisheries.

In other words, this plan provides an outline, a method, and a set of long-term goals, but the action steps to reach those objectives will differ from issue to issue and, to some degree, according to the needs and desires of all our constituencies and the availability of practical options.